



IIA ISSUES NOTE

INTERNATIONAL INVESTMENT AGREEMENTS



FACT SHEET ON INTRA-EUROPEAN UNION INVESTOR–STATE ARBITRATION CASES

H I G H L I G H T S

- Intra-European Union (EU) investor–State arbitration has been a prominent topic in domestic and international discourses. Recent developments related to the *Achmea* case put a spotlight on the future of intra-EU cases based on bilateral investment treaties and the Energy Charter Treaty (ECT). This Note presents statistics and facts on intra-EU investor–State arbitration cases by the end of July 2018.
- The overall number of known intra-EU cases (treaty-based arbitrations initiated by an investor from one EU member State against another EU member State) totalled 174 by 31 July 2018, which constitutes 20 per cent of the 904 known investor–State dispute settlement (ISDS) cases globally.
- Most known intra-EU cases were brought against three EU member States: Spain (40 cases), Czechia (30) and Poland (19). Investors from the Netherlands, Germany, Luxembourg and the United Kingdom initiated about half of the known intra-EU arbitrations.
- Ninety-five per cent of intra-EU cases were based on investment treaties signed in the 1990s or earlier. About 45 per cent of the cases were brought pursuant to the ECT (1994).
- By 31 July 2018, some 91 intra-EU ISDS cases had been concluded and 83 were pending. Out of the concluded cases, 47 per cent were decided in favour of the State and 27 per cent in favour of the investor, with monetary compensation awarded. The remaining cases were settled, discontinued or the tribunal found a treaty breach, but did not award monetary compensation.
- A review of 49 decided intra-EU cases revealed that claims involved investment projects at various stages of their lifespan and were directed against both measures of general application and individual measures, including – on some occasions – State conduct with a distinct EU dimension. These measures affected different types of assets held by investors, most frequently shareholdings in local companies operating in a broad range of economic sectors. The alleged adverse effect of the challenged State conduct ranged from a failure to secure a business opportunity or diminution in profits to the total loss of a business enterprise.
- Annex 2 contains a mapping of principal issues (jurisdiction, admissibility and merits) discussed by tribunals in intra-EU arbitral decisions publicly available by 31 July 2018.

1. Statistics on intra-EU investor–State arbitration cases

The overall number of known treaty-based arbitrations initiated by an investor from one European Union (EU) member State against another EU member State (“intra-EU” arbitrations) totalled 174 by 31 July 2018. This constitutes about 20 per cent of the 904 known investor–State dispute settlement (ISDS) cases globally (figure 1, annex 1). Only three known intra-EU disputes were initiated in the first seven months of this year.¹

Important developments have taken place at EU level in 2018. In particular, on 6 March 2018, the Court of Justice of the European Union (CJEU) ruled that the ISDS clause in the bilateral investment treaty (BIT) between the Netherlands and Slovakia (1991) – examined in the context of the *Achmea* case – was incompatible with EU law. Following this decision, the German Federal Court of Justice, which had referred the issue in the *Achmea* case to the CJEU, set aside the final award in that arbitration (box 1).

Box 1. The CJEU’s *Achmea* judgment and its first impact on intra-EU arbitrations

The CJEU judgment, rendered on 6 March 2018, relates to a long-running investment arbitration brought by Achmea, a Dutch company, against Slovakia under UNCITRAL Arbitration Rules. The arbitral tribunal had decided in favour of the claimant in 2012, after having assumed jurisdiction over the claims in a 2010 decision.^a Slovakia sought to set aside the arbitral decisions before German courts (Germany being the seat of arbitration), contending that the arbitration clause in the invoked Netherlands–Slovakia BIT (1991) was contrary to several provisions of the Treaty on the Functioning of the European Union (TFEU). The German Federal Court of Justice (Bundesgerichtshof), hearing Slovakia’s appeal case, submitted the request for a preliminary ruling to the CJEU.

In its judgment of 6 March 2018, the CJEU examined the investor–State arbitration clause in the Netherlands–Slovakia BIT (1991) and ruled that it was incompatible with the TFEU.^b The CJEU’s reasoning suggested, more generally, that ISDS provisions in other intra-EU BITs were also incompatible with EU law.

With reference to the CJEU’s judgment, the German Federal Court of Justice (Bundesgerichtshof) proceeded to set aside the final award rendered in the *Achmea v. Slovakia* arbitration. In its decision of 31 October 2018, the German Federal Court of Justice held that no valid arbitration agreement existed between the parties.^c

In several ongoing intra-EU ISDS proceedings, the respondent States sought to introduce arguments based on the CJEU’s *Achmea* judgment. It remains to be seen which impact the *Achmea* developments will ultimately have on intra-EU disputes conducted under various arbitration rules, based on BITs and the ECT.

Source: UNCTAD.

Notes:

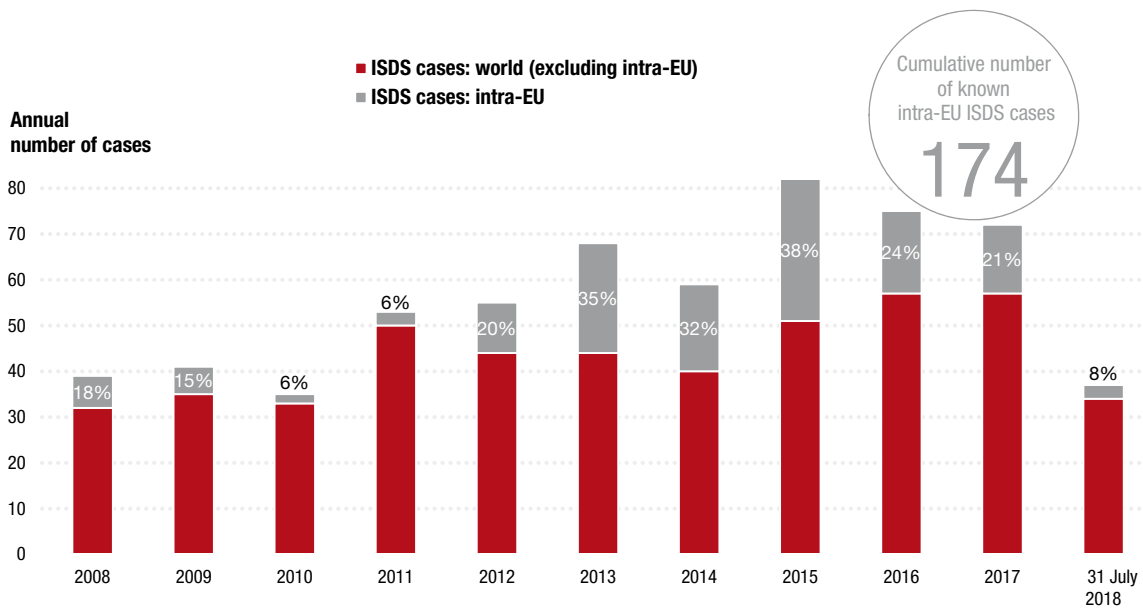
^a *Achmea B.V. (formerly Eureko B.V.) v. The Slovak Republic* (I) (PCA Case No. 2008-13), Award on Jurisdiction, Arbitrability and Suspension, 26 October 2010; Final Award, 7 December 2012.

^b CJEU, *Slovak Republic v. Achmea BV* (Case C-284/16), Judgment, 6 March 2018.

^c German Federal Court of Justice, Decision, 31 October 2018.

¹ Less than 10 per cent of the 37 known cases filed so far in 2018 are intra-EU disputes. If this trend persists until the end of the year, the share of intra-EU disputes will be significantly lower than the historical average of 20 per cent.

Figure 1. Known ISDS cases and share of intra-EU cases, 2008–31 July 2018



Source: UNCTAD, ISDS Navigator.

Note: The cumulative number of intra-EU ISDS cases includes known cases irrespective of each member State's individual date of accession to the EU. See figure 2 for the number of pre-accession ISDS cases.

Intra-EU cases: respondent States

Spain, Czechia and Poland were the most frequent respondents in known intra-EU cases to date (figure 2). About half of all intra-EU disputes were directed against these three member States.

New EU member States (that acceded the EU in 2004 or thereafter) were respondents to twice as many known cases (117) as the EU-15 countries (57 cases). The 40 known intra-EU cases against Spain account for most disputes in the latter category. About 13 per cent of cases were initiated against current EU member States prior to their date of accession.

Intra-EU cases: home States of claimants

Investors from the Netherlands, Germany, Luxembourg and the United Kingdom brought the most intra-EU cases (figure 3).

Investment treaties invoked

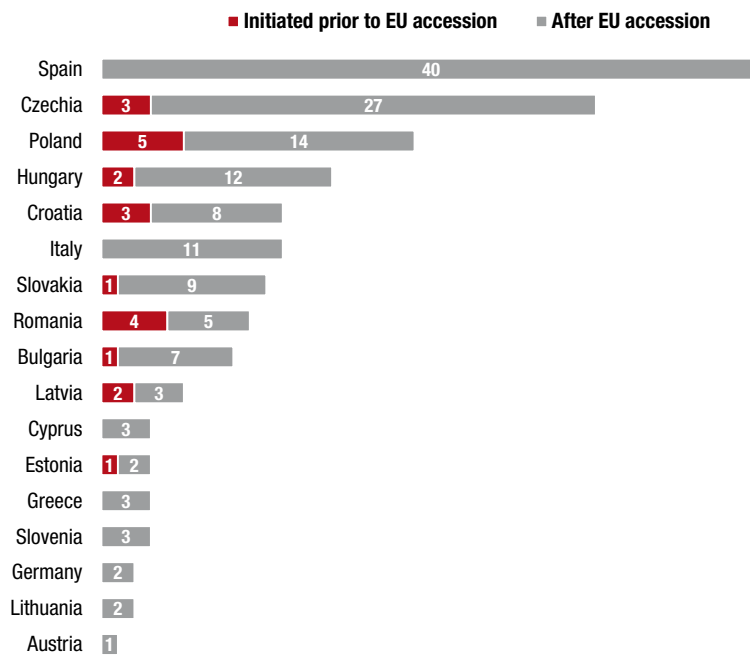
Ninety-five per cent of intra-EU cases were based on investment treaties signed in the 1990s or earlier. The remaining cases were based on treaties signed in 2000 to 2002. The Energy Charter Treaty (ECT) (1994) was the most frequently invoked treaty, accounting for about 45 per cent of known intra-EU cases (76 cases). The Czechia–Germany BIT (1990) was second with 9 cases. The three known intra-EU disputes initiated in the first seven months of 2018 were based on the ECT.²

Economic sectors involved

About 83 per cent of the intra-EU cases related to activities in the services sector. Half of the services cases related to the supply of electricity, gas, steam and air (77 cases) and 15 per cent to financial and insurance services (24 cases). The remaining cases in the services sector included information and communication; water supply sewerage and waste management; transportation and storage; and others. Twelve per cent of all intra-EU cases involved activities in the manufacturing sector and the remaining five per cent concerned primary industries.

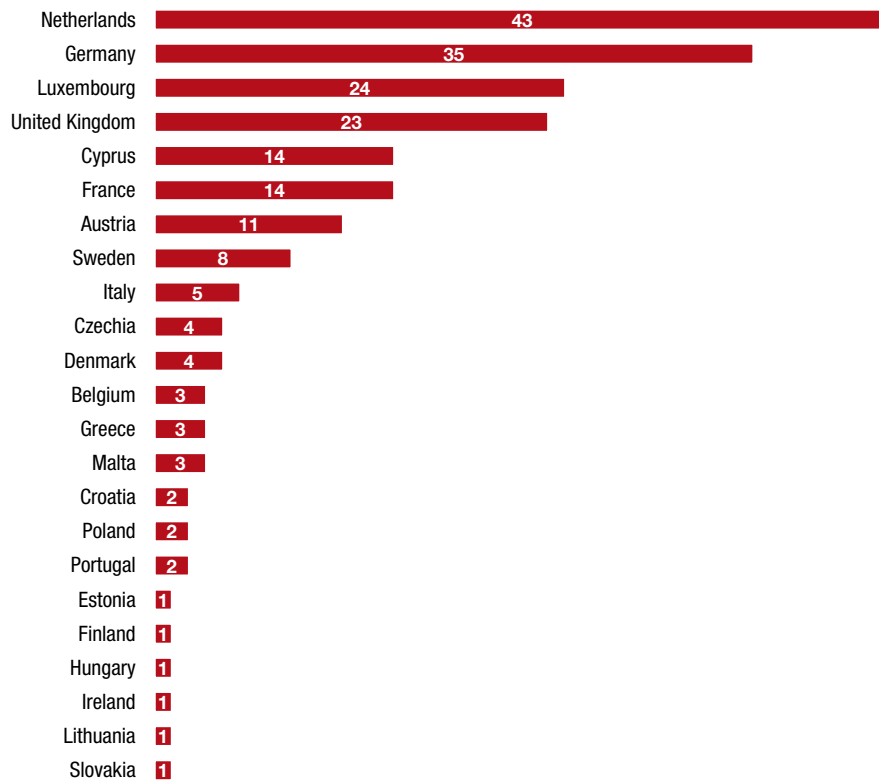
² After 31 July 2018, two more intra-EU disputes – both based on intra-EU BITs – were filed at ICSID.

Figure 2. Intra-EU cases: most frequent respondents, 1987–31 July 2018
(Number of known cases)



Source: UNCTAD, ISDS Navigator.

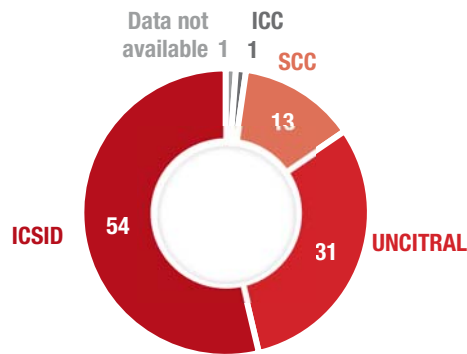
Figure 3. Intra-EU cases: most frequent home States of claimants, 1987–31 July 2018
(Number of known cases)



Source: UNCTAD, ISDS Navigator.

Note: Several cases were brought by two or more claimants having different (EU and non-EU) nationalities.

Figure 4. Known intra-EU cases filed by arbitral rules, 1987–31 July 2018 (Per cent)



Source: UNCTAD, ISDS Navigator.

Arbitral forums and rules

About 55 per cent of the known intra-EU cases were filed under the ICSID Convention (figure 4). The UNCITRAL Arbitration Rules were the second most used procedural basis, followed by the Arbitration Rules of the Stockholm Chamber of Commerce (SCC) Arbitration Institute.

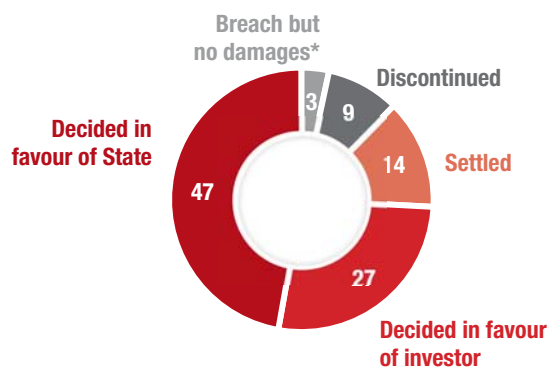
Overall outcomes

By 31 July 2018, some 91 intra-EU ISDS cases had been concluded and 83 were pending. About 45 per cent of all concluded cases were decided in favour of the State, and about one-quarter were decided in favour of the investor, with monetary compensation awarded. The remaining cases were settled, discontinued or the tribunal found a treaty breach but did not award monetary compensation (figure 5).

Of the cases that were resolved in favour of the State, one-quarter were dismissed for lack of jurisdiction and three-quarters were dismissed on the merits.

Looking at the totality of the cases decided on the merits (i.e. where a tribunal had to determine whether the challenged measure breached any of the IIA's substantive obligations), about 55 per cent were decided in favour of the State and 45 in favour of the investor (figure 6).

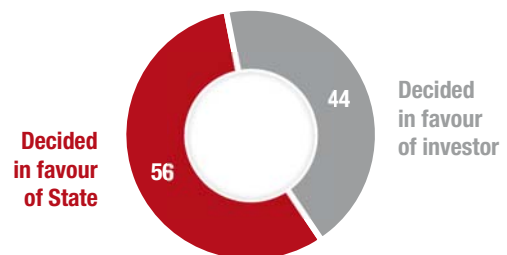
Figure 5. Results of concluded intra-EU cases, 1987–31 July 2018 (Per cent)



Source: UNCTAD, ISDS Navigator.

* Decided in favour of neither party (liability found but no damages awarded).

Figure 6. Results of decisions on the merits in intra-EU cases, 1987–31 July 2018 (Per cent)



Source: UNCTAD, ISDS Navigator.

Note: Excluding cases (i) dismissed by tribunals for lack of jurisdiction, (ii) settled, (iii) discontinued for reasons other than settlement (or for unknown reasons), and (iv) decided in favour of neither party (liability found but no damages awarded).

Overall amounts claimed and awarded

On average, successful claimants in intra-EU disputes were awarded about 45 per cent of the amounts they claimed. In cases decided in favour of the investor, the average amount claimed was \$232 million (approx. €203 million) and the median \$100 million (approx. €88 million).³ The average amount awarded was \$104 million (approx. €91 million) and the median \$34 million (approx. €30 million). These amounts do not include interest or legal costs, and some of the awarded sums may have been subject to set-aside or annulment proceedings.

ICSID annulment proceedings and judicial review by national courts

Disputing parties initiated annulment proceedings in about 25 per cent of the decided intra-EU cases conducted under the ICSID Convention (7 out of 27 decided cases).

At 37.5 per cent, domestic set-aside proceedings were more frequent in non-ICSID Convention cases (18 out of 48 cases, in which at least one decision or award was rendered).

2. Decided intra-EU investor–State arbitrations: facts, measures and salient issues

This section covers 49 intra-EU arbitrations that were decided by tribunals (i.e. excluding pending, settled or discontinued cases) and for which the arbitral decisions were publicly available by 31 July 2018 (annex 2). It provides an overview of the following issues:

- Affected investment – stage of business activity and types of assets impaired
- Types of challenged measures
- Alleged rationale underlying the challenged measures
- Alleged adverse effects of the challenged measures
- Salient legal issues that have arisen in the proceedings

Annex 2 contains a mapping of principal legal issues (jurisdiction, admissibility and merits) discussed by tribunals in intra-EU arbitral decisions.

Out of the 49 reviewed cases, 10 were dismissed for lack of jurisdiction, and more than half of the remaining cases (22 out of 39) ended with the dismissal of all claims on the merits. In 14 cases, tribunals decided in favour of the investor, awarding compensation. In three more cases, tribunals found that the respondent State had breached the treaty, but awarded no damages to the claimants.

Affected investment: stage of business activity and types of assets impaired

Intra-EU disputes have involved businesses at various stages, ranging from pre-investment activities to the dissolution of an enterprise (table 1).

Table 1. Investment stages and activities		
Stage of investment	Activity affected	Case examples
Pre-investment stage	Participating in public tenders	<i>Bosca v. Lithuania</i> <i>Nordzucker v. Poland</i>
	Obtaining approvals for the project	<i>ECE v. Czechia</i>
Development stage	Constructing a production facility	<i>Blusun v. Italy</i>
Operational stage	Producing goods, providing services	Renewable energy cases against Spain <i>Emmis v. Hungary</i> <i>HICEE v. Slovakia</i> <i>Micula v. Romania (I)</i> <i>EURAM Bank v. Slovakia</i> <i>Rompetrol v. Romania</i>

³ Reference to “dollars” (\$) means United States dollars, unless otherwise indicated.

Table 1. Investment stages and activities		
Stage of investment	Activity affected	Case examples
Dissolution stage	Bankruptcy proceedings	<i>Dan Cake v. Hungary</i> <i>Oostergetel v. Slovakia</i>

Source: UNCTAD.

In many cases, the affected assets owned by investors were shareholdings in companies that operate in various sectors (e.g. banking, sale of automobile parts, health insurance, food manufacturing, oil refining, yarn and thread manufacturing, marketing of pharmaceuticals, construction, radio broadcasting, customs processing, frozen-food warehousing, supply of visual aids and technologies for the blind) (table 2).

Table 2. Examples of types of affected assets owned by investors	
Types of affected assets (not exhaustive)	Case examples
Shareholdings in local companies (The relevant local companies may own a large variety of tangible and intangible assets)	<i>A11Y v. Czechia</i> <i>Accession Mezzanine v. Hungary</i> <i>Achmea v. Slovakia (I & II)</i> <i>Antaris Solar and Göde v. Czechia</i> <i>Antin v. Spain</i> <i>Austrian Airlines v. Slovakia</i> <i>Binder v. Czechia</i> <i>Busta v. Czechia</i> (and most other cases)
Rights under contracts, e.g. for airport management, supply of heating or energy, and other	<i>ADC v. Hungary</i> <i>AES v. Hungary (II)</i> <i>Electrabel v. Hungary</i> <i>OKO v. Estonia</i> <i>Roussalis v. Romania</i> <i>UAB v. Latvia</i>
Land	<i>Gavrilovic v. Croatia</i>
Government bonds	<i>Poštová banka and Istrokapital v. Greece</i>
Claims to money under commercial arbitration awards	<i>Anglia v. Czechia</i> <i>Gavazzi v. Romania</i>

Source: UNCTAD.

Types of challenged measures

Intra-EU cases involved challenges to conduct at all levels of government (central, regional and municipal) as well as all branches of power (legislative, executive and judicial).

In several cases, investors complained about the acts of entities and persons that were not State organs, but whose acts could allegedly be attributed to the government. Such entities/persons have included, in particular, State-owned enterprises and bankruptcy trustees or liquidators.

Conduct that has given rise to investor claims can be divided into measures of general application (e.g. legislative acts that apply to all persons that fall within the act's scope) and individual measures (i.e. acts or conduct directed at a specific person or entity). Sometimes, a single case may combine challenges to general and individual measures.

(i) Measures of general application

Legislative acts concerning the renewable energy sector were among the most frequently challenged measures of general application in intra-EU ISDS proceedings (table 3).

Table 3. Examples of measures of general application		
Respondent State	Measures challenged (as alleged)	Case examples
Spain	Legislative acts concerning the renewable energy sector, abolishing the earlier legal regime and replacing it with a new regime based on different principles and significantly less benefits for producers	Renewable energy cases against Spain
Italy	Legislative acts placing certain restrictions on the use of agricultural land for solar plants and amending the rules on 'feed-in tariffs'	<i>Blusun v. Italy</i>
Greece	Legislation concerning restructuring of government bond obligations	<i>Poštová banka and Istrokapital v. Greece</i>
Czechia	Abrogation of tax incentives and introduction of a levy for solar energy producers	<i>Antaris Solar and Göde v. Czechia</i> <i>JSW Solar and Wirtgen v. Czechia</i>
Slovakia	Legislation prohibiting private health insurance companies to distribute profits and requiring them to reinvest all such profits in the provision of public health care	<i>EURAM Bank v. Slovakia</i> <i>HICEE v. Slovakia</i>
Hungary	Legislation introducing regulated prices for electric energy	<i>AES v. Hungary (II)</i>
Romania	Legislation revoking the majority of incentives previously granted to investors in the country's "disfavoured" regions	<i>Micula v. Romania (I)</i>
Romania	Legislation abolishing duty-free activities at airports	<i>EDF v. Romania</i>
Czechia	Legislation concerning quotas for the production of sugar	<i>Eastern Sugar v. Czechia</i>

Source: UNCTAD.

Given that a measure of general application may affect multiple actors, a single measure can give rise to multiple claims. The most prominent example are the 40 intra-EU cases against Spain arising out of its regulatory reforms in the renewable energy sector (box 2). Multiple claims may also be filed in respect of an individual measure, for example if several foreign shareholders in the affected local enterprise launch separate arbitrations.

Box 2. Arbitration claims against Spain arising out of its renewable energy reforms

In 2007, Spain passed legislation that created favourable conditions for investing in its renewable energy sector. By the end of 2013, Spain had an estimated accumulated tariff deficit (the financial gap between the subsidies paid to energy producers and revenues derived from energy sales to consumers) of some \$35 billion (€30 billion), which threatened the sustainability of Spain's electricity system. In response, Spain adopted a series of legislative acts that first changed certain features of the original 2007 regime and later abolished the regime altogether and replaced it with a new one by June 2014.

Renewable energy investors from other EU member States have sought to recover a total compensation of at least \$9.1 billion (€7.8 billion) in 40 ISDS proceedings against Spain under the ECT.^a

By 31 July 2018, (at least) six ISDS claims against Spain had been decided:

- In two cases, the arbitral tribunals dismissed the claims on the merits.
- In four cases, the tribunals found Spain liable for breaching the ECT and awarded monetary compensation to the claimants.

Source: UNCTAD.

Notes:

^a Based on UNCTAD, ISDS Navigator.

(ii) Individual measures

Examples of individual measures that were challenged in intra-EU cases include terminations of contracts, interferences with licenses and permits, and a large variety of other measures (table 4).

Table 4.	Examples of individual measures challenged	
Category	Measures challenged (as alleged)	Case examples
Conduct of host State courts	Improper conduct of bankruptcy proceedings by host State courts	<i>Dan Cake v. Hungary</i> <i>Oostergetel v. Slovakia</i> <i>Vöcklinghaus v. Czechia</i>
	Delays in enforcing, refusal to enforce or annulment of a commercial arbitral award issued in the investor's favour	<i>Anglia v. Czechia</i> <i>Gavazzi v. Romania</i>
Interference with investor's contractual rights	Termination of contract with the investor	<i>ADC v. Hungary</i> <i>UAB v. Latvia</i> <i>Vigotop v. Hungary</i>
	Failure by a government to fulfil its contractual or other undertakings in relation to the investment	<i>Gavazzi v. Romania</i> <i>OKO v. Estonia</i>
Conduct of public tenders	Irregularities connected to the procedure and outcome of public tenders	<i>Accession Mezzanine v. Hungary</i> <i>Emmis v. Hungary</i> <i>InterTrade v. Czechia</i>
	Annulment of privatization tender results	<i>Bosca v. Lithuania</i>
	Failure to conclude a contract with the winning bidder	<i>Nordzucker v. Poland</i>
Administration of licenses and permits	Failure to issue a permit or authorisation	<i>ECE v. Czechia</i> <i>Servier v. Poland</i>
	Cancellation of a license to operate	<i>UAB v. Latvia</i>
	Refusal to allow a transfer of a license to another entity	<i>EMV v. Czechia</i>
Administrative interference in business activity	Attaching a company's bank accounts	<i>Gavazzi v. Romania</i> <i>UAB v. Latvia</i>
	Unjustified inspections	<i>Roussalis v. Romania</i>
	Causing administrative difficulties in securing land rights	<i>Vigotop v. Hungary</i>
	Restricting shareholder rights and requiring the claimant to sell its shares	<i>PL Holdings v. Poland</i>
Regulatory decisions	Unlawful administration of regulated prices/tariffs	<i>UAB v. Latvia</i>
	Withdrawal of prior commitments regarding investment incentives or State aid	<i>Invesmart v. Czechia</i> <i>Vigotop v. Hungary</i>
Hindering the claimant's market position	Incentivizing customers to leave the claimant's business	<i>A11Y v. Czechia</i>
	Otherwise diverting business away from the investor	<i>WNC v. Czechia</i>
Conduct of police forces and enforcement agencies	Allegedly wrongful criminal prosecution of the investor or its employees	<i>Gavrilovic v. Croatia</i> <i>Rompotrol v. Romania</i> <i>Roussalis v. Romania</i>
	Failure of the police forces to protect the investor's business from attacks by third parties	<i>Gavrilovic v. Croatia</i> <i>Vöcklinghaus v. Czechia</i>
	Alleged wrongful enforcement of obligations to pay taxes or other payments	<i>Binder v. Czechia</i> <i>Roussalis v. Romania</i>
Direct expropriation	Direct expropriation of the investor's assets	<i>Gavrilovic v. Croatia</i>

Source: UNCTAD.

(iii) Planned measures

In a few cases, investors sought to use the ISDS mechanism to prevent a State from adopting a planned measure. In *Achmea v. Slovakia (II)*, the claimant challenged planned legislation to introduce a unitary system of public health insurance in the Slovak Republic.

(iv) EU dimension of certain challenged measures

In a limited number of cases, the challenged State conduct had a distinct EU dimension, in particular when it was affected by the requirements of EU law (table 5).

Table 5. Examples of challenged measures with an EU dimension	
Measures at issue (not exhaustive)	Case examples
Reform of the country's regulatory regime concerning production of sugar, undertaken in order to comply with EU law in preparation of the country's EU accession	<i>Eastern Sugar v. Czechia</i>
Government's actions allegedly dictated by a legally binding decision of the EU Commission prohibiting provision of State aid contrary to EU competition law	<i>Electrabel v. Hungary</i>
Refusal of the State to provide support measures to the claimant, despite the prior "implicit" commitments by the State, because state aid would be against EU law	<i>Invesmart v. Czechia</i>
Revocation of incentives extended to investors in certain "disfavoured" regions of the country, justified by the need to comply with EU rules on State aid at the time when the country was preparing for EU accession	<i>Micula v. Romania (I)</i>

Source: UNCTAD.

Alleged rationale underlying the challenged measures

The alleged reasons or motives underlying the challenged conduct – as argued by respondent States or claimants – included, amongst others, reversal of policy after the change of government, the need to address a country's budget deficit and the need to comply with EU law (table 6).

Table 6. Examples of reasons underlying the challenged State conduct	
Alleged rationale (not exhaustive)	Case examples
Reversal of policy, including after the change of government	<i>Achmea v. Slovakia (I & II)</i> <i>Antaris Solar and Göde v. Czechia</i> <i>Blusun v. Italy</i> <i>EURAM Bank v. Slovakia</i> <i>Vigotop v. Hungary</i>
Need to address budget deficit	Renewable energy cases against Spain <i>Poštová banka and Istrokapital v. Greece</i>
Need to comply with EU law	<i>Eastern Sugar v. Czechia</i> <i>Electrabel v. Hungary</i> <i>Invesmart v. Czechia</i> <i>Micula v. Romania (I)</i>
Protectionism in favour of domestic producers	<i>Servier v. Poland</i>
Political favouritism	<i>Accession Mezzanine v. Hungary</i> <i>Emmis v. Hungary</i>
Intention to appropriate investor's assets (by the government or third parties)	<i>Gavrilovic v. Croatia</i> <i>Oostergetel v. Slovakia</i> <i>Vöcklinghaus v. Czechia</i>
Extortion of a bribe	<i>EDF v. Romania</i>
Intention to drive investor out of the market	<i>A11Y v. Czechia</i>

Source: UNCTAD.

Alleged adverse effects of measures

Depending on the specifics of each case, claimants alleged the following main types of consequences suffered by them as the result of the challenged measures (table 7).

Table 7. Examples of adverse effects allegedly suffered by investors	
Adverse effects allegedly suffered (not exhaustive)	Case examples
Going out of business, bankruptcy, liquidation	<i>A11Y v. Czechia</i> <i>Binder v. Czechia</i> <i>EMV v. Czechia</i> <i>Gavazzi v. Romania</i> <i>Invesmart v. Czechia</i> <i>Oostergetel v. Slovakia</i> <i>Vöcklinghaus v. Czechia</i>
Significant diminution in profits	Renewable energy cases against Spain <i>Antaris Solar and Göde v. Czechia</i> <i>AES v. Hungary (II)</i>
Failure to secure a business opportunity or to complete an investment project	<i>Blusun v. Italy</i> <i>Bosca v. Lithuania</i> <i>ECE v. Czechia</i> <i>Nordzucker v. Poland</i> <i>Vigotop v. Hungary</i>
Loss of valuable assets (real estate, etc.)	<i>Enkev Beheer v. Poland</i> <i>Gavrilovic v. Croatia</i> <i>Oostergetel v. Slovakia</i>

Source: UNCTAD.

Mapping of principal legal issues in intra-EU decisions

Annex 2 contains a mapping of principal jurisdiction, admissibility and merits issues discussed by tribunals in intra-EU arbitral decisions. Among others, the following issues played a role in the 49 reviewed intra-EU cases:

- Intra-EU objection to jurisdiction: The (alleged) non-applicability of intra-EU BITs, as well as the ECT, between EU member States was a recurring issue, raised either by the respondent State or by the European Commission acting as *amicus curiae*.
- Definition of investment: The reviewed decisions frequently discussed whether the claimant had made a protected investment in the territory of the host State (e.g. whether the claimant contributed resources; whether certain “pre-investment” expenses, loans provided by the claimant, contractual rights, rights under government bonds, or claims to money under commercial arbitral awards constituted an investment).
- Investor compliance with host State law: In several cases, tribunals addressed the issue of whether the claimant’s (alleged) violation of host State laws, at the time of making the investment, should bar its ISDS claim. In at least two cases, the respondent States also lodged counterclaims against the claimant.
- Investor nationality and ultimate ownership: In a number of cases, respondent States raised questions as to whether the claimant could benefit from treaty protections in light of its nationality and/or residence (in case of natural persons), or the nationality of its ultimate owners (in case of companies).⁴
- Shareholders’ rights: In some cases, tribunals were faced with the question of whether the claimant, a shareholder in a local company, was entitled to make claims and recover damages caused to that company.
- Reliance on the most-favoured-nation (MFN) provision to broaden the tribunal’s jurisdiction: In several cases, claimants attempted to overcome narrow ISDS clauses in certain intra-EU BITs (that limited the tribunal’s jurisdiction to expropriation claims or claims under other specific treaty provisions) by invoking the respective treaty’s MFN clause and pointing to other IIAs signed by the respondent State that contained a broader ISDS clause.
- Relationship between investor–State arbitration and domestic court proceedings: In some cases, tribunals analysed whether prior or parallel recourse to host State courts precluded resort to ISDS proceedings.

⁴ Ownership and control are highly relevant issues in global ISDS cases, as they may involve nationality mismatches between ISDS claimants and their ultimate owners. See pp. 171-181 in UNCTAD (2016). *World Investment Report 2016. Investor Nationality: Policy Challenges*. New York and Geneva: United Nations.

- Attribution of challenged conduct to the respondent State: In several cases, tribunals had to decide whether the conduct of certain entities and persons, for example State-owned enterprises and bankruptcy trustees, could be attributed to the respondent State.
- Legitimate expectations under the fair and equitable treatment (FET) clause and the right to regulate: In a significant number of awards, the tribunal's analysis on legitimate expectations and the right to regulate stood out as a particularly important merits issue.
- "Umbrella" clause: Some cases involving umbrella-clause claims touched upon issues such as whether the umbrella clause applied in the absence of a direct agreement between the claimant and the State, and whether it covered State obligations arising out of general legislation.
- Indirect expropriation: In cases involving allegations that the challenged measures amounted to indirect expropriation of investment, tribunals addressed the criteria for an indirect expropriation to be found, and, on certain occasions, discussed issues such as the principle of proportionality and the police powers doctrine.

3. Conclusions

Intra-EU investment arbitration has been a prominent topic in domestic and international discourses. Many intra-EU cases have been large in magnitude and have become politically controversial. The CJEU's *Achmea* decision and the set-aside of the *Achmea* award by a German court in 2018 have added a new dimension to the discussion on the future of intra-EU arbitration based on investment treaties.

At the same time, the EU and its member States pursue a new generation of investment agreements with third countries as well as the reform of investment dispute settlement towards the creation of a multilateral investment court. The regional trends within the EU and its member States occur in a broader context of transition in the global investment treaty regime, which is shaped by common IIA reform objectives and a diverse set of actions at different levels of investment policymaking (multilateral, regional, bilateral and national). These trends may also provide insights for third countries or groups negotiating with the EU and its member States, as well as for potential EU candidate countries, and non-EU groupings (e.g. those pursuing integration on investment issues).

UNCTAD Policy Tools for IIA Reform

Investment Policy Framework for Sustainable Development (2015 version)
https://unctad.org/en/PublicationsLibrary/diaepcb2015d5_en.pdf

Road Map for IIA Reform (WIR 2015, Chapter IV)
https://unctad.org/en/PublicationChapters/wir2015ch4_en.pdf

Phase 2 of IIA Reform: Modernizing the Existing Stock of Old-Generation Treaties (IIA Issues Note, No. 2, June 2017)
<https://investmentpolicyhub.unctad.org/Publications/Details/173>

Global Action Menu for Investment Facilitation (May 2017)
<https://investmentpolicyhub.unctad.org/Publications/Details/148>

Recent Policy Developments and Key Issues: International Investment Policies (WIR 2018, Chapter III)
https://unctad.org/en/PublicationChapters/wir2018ch3_en.pdf

Recent Developments in the International Investment Regime (IIA Issues Note, No. 1, May 2018)
<https://investmentpolicyhub.unctad.org/Publications/Details/1186>

Investor–State Dispute Settlement: Review of Developments in 2017 (IIA Issues Note, No. 2, June 2018)
<https://investmentpolicyhub.unctad.org/Publications/Details/1188>

Reform Package for the International Investment Regime (2018 edition)
<https://investmentpolicyhub.unctad.org/Publications/Details/1190>

UNCTAD Investment Policy Online Databases

International Investment Agreements Navigator
<https://investmentpolicyhub.unctad.org/IIA>

IIA Mapping Project
<https://investmentpolicyhub.unctad.org/IIA/mappedContent>

Investment Dispute Settlement Navigator
<https://investmentpolicyhub.unctad.org/ISDS>

Investment Laws Navigator
<https://investmentpolicyhub.unctad.org/InvestmentLaws>

Annex 1. List of 174 known intra-EU ISDS cases (as of 31 July 2018)

Key information about each case is available at: <http://investmentpolicyhub.unctad.org/ISDS/>

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
1	2018	<i>ACF Renewable Energy Limited v. Republic of Bulgaria</i> (ICSID Case No. ARB/18/1)	Bulgaria	Malta	ECT (1994)
2	2018	<i>Anina Pro Invest Ltd, Core Value Capital GmbH, Core Value Investments GmbH & Co KG Gamma and others v. Romania</i> (ICSID Case No. ARB/18/19)	Romania	Austria; Cyprus; Germany; Netherlands	ECT (1994)
3	2018	<i>Veolia Propreté SAS v. Italian Republic</i> (ICSID Case No. ARB/18/20)	Italy	France	ECT (1994)
4	2017	<i>Addiko Bank AG and Addiko Bank d.d. v. Republic of Croatia</i> (ICSID Case No. ARB/17/37)	Croatia	Austria	Austria–Croatia BIT (1997)
5	2017	<i>Airbus Helicopters S.A.S. i Airbus S.E. v. Republic of Poland</i>	Poland	Netherlands	Netherlands–Poland BIT (1992)
6	2017	<i>AS Norvik Banka, Alexander Guseynikov, Grigory Guseynikov and others v. Republic of Latvia</i> (ICSID Case No. ARB/17/47)	Latvia	United Kingdom	Latvia–United Kingdom BIT (1994)
7	2017	<i>Bank of Cyprus Public Company Limited v. Hellenic Republic</i> (ICSID Case No. ARB/17/4)	Greece	Cyprus	Cyprus–Greece BIT (1992)
8	2017	<i>DCM Energy GmbH & Co. Solar 1 KG, DCM Energy GmbH & Co. Solar 2 KG, Edisun Power Europe A.G., Hannover Leasing Sun Invest 2 Spanien Beteiligungs GmbH, and Hannover Leasing Sun Invest 2 Spanien GmbH & Co. KG v. Kingdom of Spain</i> (ICSID Case No. ARB/17/41)	Spain	Germany; Switzerland	ECT (1994)
9	2017	<i>Elitech B.V. and Razvoj Golf D.O.O. v. Republic of Croatia</i> (ICSID Case No. ARB/17/32)	Croatia	Netherlands	Croatia–Netherlands BIT (1998)
10	2017	<i>Erste & Steiermärkische Bank d.d., Erste Group Bank AG, and Steiermärkische Bank und Sparkassen AG v. Republic of Croatia</i> (ICSID Case No. ARB/17/49)	Croatia	Austria	Austria–Croatia BIT (1997)
11	2017	<i>FREIF Eurowind v. Kingdom of Spain</i> (SCC Case No. 2017/060)	Spain	United Kingdom	ECT (1994)
12	2017	<i>Fynderdale Holdings B.V. v. The Czech Republic</i> (PCA Case No. 2018-18)	Czechia	Netherlands	Czechia–Netherlands BIT (1991)
13	2017	<i>Inicia Zrt, Kintyre Kft and Magyar Farming Company Ltd v. Hungary</i> (ICSID Case No. ARB/17/27)	Hungary	United Kingdom	Hungary–United Kingdom BIT (1987)
14	2017	<i>Portigon AG v. Kingdom of Spain</i> (ICSID Case No. ARB/17/15)	Spain	Germany	ECT (1994)
15	2017	<i>Raiffeisen Bank International AG and Raiffeisenbank Austria d.d. v. Republic of Croatia</i> (ICSID Case No. ARB/17/34)	Croatia	Austria	Austria–Croatia BIT (1997)
16	2017	<i>Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic</i> (ICSID Case No. ARB/17/14)	Italy	United Kingdom	ECT (1994)
17	2017	<i>Slot Group a.s. v. Republic of Poland</i> (PCA Case No. 2017-10)	Poland	Czechia	Czechia–Poland BIT (1993)
18	2017	<i>Triodos SICAV II v. Kingdom of Spain</i> (SCC Case No. 2017-194)	Spain	Luxembourg	ECT (1994)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
19	2016	<i>A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990)
20	2016	<i>Aharon Naftali Biram, Gilatz Spain SL, Redmill Holdings Ltd and Sun-Flower Olmeda GmbH v. Kingdom of Spain</i> (ICSID Case No. ARB/16/17)	Spain	Germany; United Kingdom	ECT (1994)
21	2016	<i>Amlyn Holding B.V. v. Republic of Croatia</i> (ICSID Case No. ARB/16/28)	Croatia	Netherlands	ECT (1994)
22	2016	<i>CEZ, a.s. v. Republic of Bulgaria</i> (ICSID Case No. ARB/16/24)	Bulgaria	Czechia	ECT (1994)
23	2016	<i>CIC Renewable Energies Italy GmbH, Enernovum Asset 1 GmbH & Co. KG, Enernovum GmbH & Co. KG and others v. Italian Republic</i> (ICSID Case No. ARB/16/39)	Italy	Germany; United Kingdom; Luxembourg	ECT (1994)
24	2016	<i>Cordoba Beheer B.V., Cross Retail S.L., Sevilla Beheer B.V., Spanish project companies v. Kingdom of Spain</i> (ICSID Case No. ARB/16/27)	Spain	Netherlands	ECT (1994)
25	2016	<i>Darley Energy Plc v. Republic of Poland</i>	Poland	United Kingdom	Poland–United Kingdom BIT (1987)
26	2016	<i>EDF Energies Nouvelles S.A. v. Kingdom of Spain</i>	Spain	France	ECT (1994)
27	2016	<i>ENGIE International Holdings BV, ENGIE SA and GDF International SAS v. Hungary</i> (ICSID Case No. ARB/16/14)	Hungary	France; Netherlands	ECT (1994)
28	2016	<i>ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic</i> (ICSID Case No. ARB/16/5)	Italy	Austria; Germany	ECT (1994)
29	2016	<i>Eurus Energy Holdings Corporation and Eurus Energy Europe B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/16/4)	Spain	Japan; Netherlands	ECT (1994)
30	2016	<i>Green Power K/S and Obton A/S v. Kingdom of Spain</i> (SCC Case No. 2016/135)	Spain	Denmark	ECT (1994)
31	2016	<i>Infracapital F1 S.à r.l. and Infracapital Solar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/16/18)	Spain	Luxembourg; Netherlands	ECT (1994)
32	2016	<i>Nova Group Investments, B.V. v. Romania</i> (ICSID Case No. ARB/16/19)	Romania	Netherlands	Netherlands–Romania BIT (1994)
33	2016	<i>Spółdzielnia Pracy Muszynianka v. Slovak Republic</i>	Slovakia	Poland	Poland–Slovakia BIT (1994)
34	2016	<i>Sun Reserve Luxco Holdings SRL v. Italy</i> (SCC Case No. 132/2016)	Italy	Luxembourg	ECT (1994)
35	2016	<i>UAB Litesko, UAB Vilniaus Energija, Veolia Baltics and Eastern Europe S.A.S., Veolia Environnement S.A. v. Republic of Lithuania</i> (ICSID Case No. ARB/16/3)	Lithuania	France	France–Lithuania BIT (1992)
36	2016	<i>UniCredit Bank Austria AG and Zagrebačka Banka d.d. v. Republic of Croatia</i> (ICSID Case No. ARB/16/31)	Croatia	Austria	Austria–Croatia BIT (1997)
37	2015	<i>9REN Holding S.a.r.l v. Kingdom of Spain</i> (ICSID Case No. ARB/15/15)	Spain	Luxembourg	ECT (1994)
38	2015	<i>Alten Renewable Energy Developments BV v. Kingdom of Spain</i> (SCC Case No. 2015/036)	Spain	Netherlands	ECT (1994)
39	2015	<i>Anglia Auto Accessories Ltd v. The Czech Republic</i> (SCC Case No. 2014/181)	Czechia	United Kingdom	Czechia–United Kingdom BIT (1990)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
40	2015	<i>B.V. Belegging-Maatschappij "Far East" v. Republic of Austria</i> (ICSID Case No. ARB/15/32)	Austria	Malta	Austria–Malta BIT (2002)
41	2015	<i>B3 Croatian Courier Coöperatief U.A. v. Republic of Croatia</i> (ICSID Case No. ARB/15/5)	Croatia	Netherlands	Croatia–Netherlands BIT (1998)
42	2015	<i>BayWa r.e. Renewable Energy GmbH and BayWa r.e. Asset Holding GmbH v. Kingdom of Spain</i> (ICSID Case No. ARB/15/16)	Spain	Germany	ECT (1994)
43	2015	<i>Belenergia S.A. v. Italian Republic</i> (ICSID Case No. ARB/15/40)	Italy	Luxembourg	ECT (1994)
44	2015	<i>Cavalum SGPS, S.A. v. Kingdom of Spain</i> (ICSID Case No. ARB/15/34)	Spain	Portugal	ECT (1994)
45	2015	<i>CEF Energia BV v. Italian Republic</i> (SCC Case No. 158/2015)	Italy	Netherlands	ECT (1994)
46	2015	<i>Cube Infrastructure Fund SICAV and others v. Kingdom of Spain</i> (ICSID Case No. ARB/15/20)	Spain	France; Luxembourg	ECT (1994)
47	2015	<i>E.ON SE, E.ON Finanzanlagen GmbH and E.ON Iberia Holding GmbH v. Kingdom of Spain</i> (ICSID Case No. ARB/15/35)	Spain	Germany	ECT (1994)
48	2015	<i>ENERGO-PRO a.s. v. Republic of Bulgaria</i> (ICSID Case No. ARB/15/19)	Bulgaria	Czechia	ECT (1994); Bulgaria–Czechia BIT (1999)
49	2015	<i>Eskosol S.p.A. in liquidazione v. Italian Republic</i> (ICSID Case No. ARB/15/50)	Italy	Italy	ECT (1994)
50	2015	<i>Foresight Luxembourg Solar 1 S.Á.R.L., Foresight Luxembourg Solar 2 S.Á.R.L., Greentech Energy System A/S, GWM Renewable Energy I S.P.A and GWM Renewable Energy II S.P.A v. Kingdom of Spain</i> (SCC Case No. 2015/150)	Spain	Luxembourg; Denmark; Italy	ECT (1994)
51	2015	<i>Frank Schumm, Joachim Kruck, Jürgen Reiss and others v. Kingdom of Spain</i> (ICSID Case No. ARB/15/23)	Spain	Germany	ECT (1994)
52	2015	<i>Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania</i> (ICSID Case No. ARB/15/31)	Romania	Canada; United Kingdom	Canada–Romania BIT (2009); Romania–United Kingdom BIT (1995)
53	2015	<i>Greentech Energy Systems and Novenergia v. Italy</i> (SCC Case No. 095/2015)	Italy	Denmark; Luxembourg	ECT (1994)
54	2015	<i>Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain</i> (ICSID Case No. ARB/15/42)	Spain	Luxembourg; Sweden	ECT (1994)
55	2015	<i>J.P. Busta and I.P. Busta v. The Czech Republic</i> (SCC Case No. 2015/014)	Czechia	United Kingdom	Czechia–United Kingdom BIT (1990)
56	2015	<i>KS Invest GmbH and TLS Invest GmbH v. Kingdom of Spain</i> (ICSID Case No. ARB/15/25)	Spain	Germany	ECT (1994)
57	2015	<i>Landesbank Baden-Württemberg, HSH Nordbank AG, Landesbank Hessen-Thüringen Girozentrale and Norddeutsche Landesbank-Girozentrale v. Kingdom of Spain</i> (ICSID Case No. ARB/15/45)	Spain	Germany	ECT (1994)
58	2015	<i>Novenergia II - Energy & Environment (SCA), SICAR v. Kingdom of Spain</i> (SCC Case No. 063/2015)	Spain	Luxembourg	ECT (1994)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
59	2015	<i>OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain</i> (ICSID Case No. ARB/15/36)	Spain	Malta; Switzerland	ECT (1994)
60	2015	<i>Silver Ridge Power BV v. Italian Republic</i> (ICSID Case No. ARB/15/37)	Italy	Netherlands	ECT (1994)
61	2015	<i>Solarpark Management GmbH & Co. Atum I KG v. Kingdom of Spain</i> (SCC Case No. 2015/163)	Spain	Germany	ECT (1994)
62	2015	<i>SolEs Badajoz GmbH v. Kingdom of Spain</i> (ICSID Case No. ARB/15/38)	Spain	Germany	ECT (1994)
63	2015	<i>Stadtwerke München GmbH and others v. Kingdom of Spain</i> (ICSID Case No. ARB/15/1)	Spain	Germany	ECT (1994)
64	2015	<i>STEAG GmbH v. Kingdom of Spain</i> (ICSID Case No. ARB/15/4)	Spain	Germany	ECT (1994)
65	2015	<i>Theodoros Adamakopoulos, Ilektra Adamantidou, Vasileios Adamopoulos and others v. Republic of Cyprus</i> (ICSID Case No. ARB/15/49)	Cyprus	Greece; Luxembourg	Cyprus–Greece BIT (1992); BLEU (Belgium-Luxembourg Economic Union)–Cyprus BIT (1991)
66	2015	<i>Watkins Holdings S.à r.l. and others v. Kingdom of Spain</i> (ICSID Case No. ARB/15/44)	Spain	Luxembourg; Netherlands	ECT (1994)
67	2015	<i>WCV Capital Ventures Cyprus Limited and Channel Crossings Limited v. The Czech Republic</i>	Czechia	Cyprus	Cyprus–Czechia BIT (2001)
68	2014	<i>A11Y LTD. v. Czech Republic</i> (ICSID Case No. UNCT/15/1)	Czechia	United Kingdom	Czechia–United Kingdom BIT (1990)
69	2014	<i>Anglia Auto Accessories, Ivan Peter Busta and Jan Peter Busta v. The Czech Republic</i>	Czechia	United Kingdom	Czechia–United Kingdom BIT (1990)
70	2014	<i>Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic</i> (ICSID Case No. ARB/14/3)	Italy	Belgium; France; Germany	ECT (1994)
71	2014	<i>Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic</i> (ICSID Case No. ARB/14/16)	Greece	Cyprus	Cyprus–Greece BIT (1992)
72	2014	<i>Forminster Enterprises Limited v. The Czech Republic</i>	Czechia	Cyprus	Cyprus–Czechia BIT (2001)
73	2014	<i>GPF GP S.à.r.l v. Poland</i> (SCC Case No. 2014/168)	Poland	Luxembourg	BLEU (Belgium-Luxembourg Economic Union)–Poland BIT (1987)
74	2014	<i>Horthel Systems BV, Poland Gaming Holding BV and Tesa Beheer BV v. Poland</i> (PCA Case No. 2014-31)	Poland	Netherlands	Netherlands–Poland BIT (1992)
75	2014	<i>Indrek Kuivallik v. Latvia</i>	Latvia	Estonia	Estonia–Latvia BIT (1996)
76	2014	<i>InfraRed Environmental Infrastructure GP Limited and others v. Kingdom of Spain</i> (ICSID Case No. ARB/14/12)	Spain	United Kingdom	ECT (1994)
77	2014	<i>Ioan Micula, Viorel Micula and others v. Romania (II)</i> (ICSID Case No. ARB/14/29)	Romania	Sweden	Romania–Sweden BIT (2002)
78	2014	<i>Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain</i> (ICSID Case No. ARB/14/1)	Spain	Netherlands	ECT (1994)
79	2014	<i>NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/14/11)	Spain	Netherlands	ECT (1994)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
80	2014	<i>PL Holdings S.a.r.l. v. Poland</i> (SCC Case No. 2014/163)	Poland	Luxembourg	BLEU (Belgium-Luxembourg Economic Union)-Poland BIT (1987)
81	2014	<i>RENERGY S.à r.l. v. Kingdom of Spain</i> (ICSID Case No. ARB/14/18)	Spain	Luxembourg	ECT (1994)
82	2014	<i>Robert Aleksandrowicz and Tomasz Czescik v. Cyprus</i>	Cyprus	Poland	Cyprus-Poland BIT (1992)
83	2014	<i>RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Kingdom of Spain</i> (ICSID Case No. ARB/14/34)	Spain	Germany	ECT (1994)
84	2014	<i>Sodexo Pass International SAS v. Hungary</i> (ICSID Case No. ARB/14/20)	Hungary	France	France-Hungary BIT (1986)
85	2014	<i>United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Republic of Estonia</i> (ICSID Case No. ARB/14/24)	Estonia	Netherlands	Estonia-Netherlands BIT (1992)
86	2014	<i>WNC Factoring Ltd (WNC) v. The Czech Republic</i> (PCA Case No. 2014-34)	Czechia	United Kingdom	Czechia-United Kingdom BIT (1990)
87	2013	<i>Achmea B.V. v. The Slovak Republic (II)</i> (PCA Case No. 2013-12)	Slovakia	Netherlands	Netherlands-Slovakia BIT (1991)
88	2013	<i>Antaris Solar GmbH and Dr. Michael Göde v. The Czech Republic</i> (PCA Case No. 2014-01)	Czechia	Germany	Germany-Slovakia BIT (1990); ECT (1994)
89	2013	<i>Antin Infrastructure Services Luxembourg S.à r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/31)	Spain	Luxembourg; Netherlands	ECT (1994)
90	2013	<i>Chantal C. van Riet, Christopher van Riet and Lieven J. van Riet v. Republic of Croatia</i> (ICSID Case No. ARB/13/12)	Croatia	Belgium	BLEU (Belgium-Luxembourg Economic Union)-Croatia BIT (2001)
91	2013	<i>CSP Equity Investment Sarl v. Kingdom of Spain</i> (SCC Case No. 094/2013)	Spain	Luxembourg	ECT (1994)
92	2013	<i>Edenred S.A. v. Hungary</i> (ICSID Case No. ARB/13/21)	Hungary	France	France-Hungary BIT (1986)
93	2013	<i>Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/36)	Spain	Luxembourg; United Kingdom	ECT (1994)
94	2013	<i>EVN AG v. Republic of Bulgaria</i> (ICSID Case No. ARB/13/17)	Bulgaria	Austria	Austria-Bulgaria BIT (1997); ECT (1994)
95	2013	<i>G.I.H.G. Limited, Natland Group Limited, Natland Investment Group NV, and Radiance Energy Holding S.A.R.L. v. The Czech Republic</i> (PCA Case No. 2013-35)	Czechia	Cyprus; Luxembourg; Netherlands	Czechia-Netherlands BIT (1991); Cyprus-Czechia BIT (2001); BLEU (Belgium-Luxembourg Economic Union)-Czechia BIT (1989); ECT (1994)
96	2013	<i>I.C.W. Europe Investments Limited v. The Czech Republic</i>	Czechia	United Kingdom	Czechia-United Kingdom BIT (1990); ECT (1994)
97	2013	<i>Impresa Grassetto S.p.A., in liquidation v. Republic of Slovenia</i> (ICSID Case No. ARB/13/10)	Slovenia	Italy	Italy-Slovenia BIT (2000)
98	2013	<i>Isolux Infrastructure Netherlands B.V. v. Kingdom of Spain</i> (SCC Case No. 2013/153)	Spain	Netherlands	ECT (1994)
99	2013	<i>JSW Solar (zwei) GmbH & Co.KG, Gisela Wirtgen, Jürgen Wirtgen, and Stefan Wirtgen v. Czech Republic</i> (PCA Case No. 2014-03)	Czechia	Germany	Czechia-Germany BIT (1990)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
100	2013	<i>Juvel Ltd and Bithell Holdings Ltd. v. Poland</i>	Poland	Cyprus	Cyprus–Poland BIT (1992)
101	2013	<i>Marfin Investment Group Holdings S.A., Alexandros Bakatselos and others v. Republic of Cyprus</i> (ICSID Case No. ARB/13/27)	Cyprus	Greece	Cyprus–Greece BIT (1992)
102	2013	<i>MOL Hungarian Oil and Gas Company Plc v. Republic of Croatia</i> (ICSID Case No. ARB/13/32)	Croatia	Hungary	ECT (1994)
103	2013	<i>Photovoltaik Knopf Betriebs-GmbH v. The Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990); ECT (1994)
104	2013	<i>Poštová banka, a.s. and Istrokapital SE v. Hellenic Republic</i> (ICSID Case No. ARB/13/8)	Greece	Cyprus; Slovakia	Czechia–Greece BIT (1991); Cyprus–Greece BIT (1992)
105	2013	<i>RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain</i> (ICSID Case No. ARB/13/30)	Spain	Luxembourg; United Kingdom	ECT (1994)
106	2013	<i>Seventhsun Holding Ltd, Jevelinia Ltd, Aventon Ltd, Stanorode Ltd and Wildoro Ltd v. Poland</i>	Poland	Cyprus	Cyprus–Poland BIT (1992)
107	2013	<i>U.S. Steel Global Holdings I B.V. v. The Slovak Republic</i> (PCA Case No. 2013-6)	Slovakia	Netherlands	Netherlands–Slovakia BIT (1991)
108	2013	<i>UP (formerly Le Chèque Déjeuner) and C.D Holding Internationale v. Hungary</i> (ICSID Case No. ARB/13/35)	Hungary	France	France–Hungary BIT (1986)
109	2013	<i>Voltaic Network GmbH v. The Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990); ECT (1994)
110	2013	<i>WA Investments-Europa Nova Limited v. The Czech Republic</i>	Czechia	Cyprus	Cyprus–Czechia BIT (2001); ECT (1994)
111	2012	<i>Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyonkezelő Zrt. v. Hungary</i> (ICSID Case No. ARB/12/3)	Hungary	United Kingdom	Hungary–United Kingdom BIT (1987)
112	2012	<i>Charanne B.V. and Construction Investments S.a.r.l. v. Spain</i> (SCC Case No. 062/2012)	Spain	Luxembourg; Netherlands	ECT (1994)
113	2012	<i>Dan Cake (Portugal) S.A. v. Hungary</i> (ICSID Case No. ARB/12/9)	Hungary	Portugal	Hungary–Portugal BIT (1992)
114	2012	<i>Emmis International Holding, B.V., Emmis Radio Operating, B.V., MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. Hungary</i> (ICSID Case No. ARB/12/2)	Hungary	Netherlands; Switzerland	Hungary–Netherlands BIT (1987); Hungary–Switzerland BIT (1988)
115	2012	<i>Enkev Beheer B.V. v. The Republic of Poland</i>	Poland	Netherlands	Netherlands–Poland BIT (1992)
116	2012	<i>Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia</i> (ICSID Case No. ARB/12/39)	Croatia	Austria	Austria–Croatia BIT (1997)
117	2012	<i>Marco Gavazzi and Stefano Gavazzi v. Romania</i> (ICSID Case No. ARB/12/25)	Romania	Italy	Italy–Romania BIT (1990)
118	2012	<i>Novera AD, Novera Properties B.V. and Novera Properties N.V. v. Republic of Bulgaria</i> (ICSID Case No. ARB/12/16)	Bulgaria	Netherlands	Bulgaria–Netherlands BIT (1999)
119	2012	<i>Slovak Gas Holding BV, GDF International SAS and E.ON Ruhrgas International GmbH v. Slovak Republic</i> (ICSID Case No. ARB/12/7)	Slovakia	France; Germany; Netherlands	ECT (1994)
120	2012	<i>UAB E energija (Lithuania) v. Republic of Latvia</i> (ICSID Case No. ARB/12/33)	Latvia	Lithuania	Latvia–Lithuania BIT (1996)
121	2012	<i>Vattenfall AB and others v. Federal Republic of Germany (II)</i> (ICSID Case No. ARB/12/12)	Germany	Sweden	ECT (1994)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
122	2011	<i>Accession Eastern Europe Capital AB and Mezzanine Management Sweden AB v. Republic of Bulgaria</i> (ICSID Case No. ARB/11/3)	Bulgaria	Sweden	Bulgaria–Sweden BIT (1994)
123	2011	<i>The PV Investors v. Spain</i> (PCA Case No. 2012-14)	Spain	Denmark; Germany; Ireland; Luxembourg; Netherlands; United Kingdom	ECT (1994)
124	2011	<i>Vigotop Limited v. Republic of Hungary</i> (ICSID Case No. ARB/11/22)	Hungary	Cyprus	Cyprus–Hungary BIT (1989)
125	2010	<i>Luigiterzo Bosca v. Republic of Lithuania</i>	Lithuania	Italy	Italy–Lithuania BIT (1994)
126	2010	<i>ST-AD GmbH v. The Republic of Bulgaria</i> (PCA Case No. 2011-06)	Bulgaria	Germany	Bulgaria–Germany BIT (1986)
127	2009	<i>ECE Projektmanagement International GmbH and Kommanditgesellschaft PANTA Achtungsechzigste Grundstücksgesellschaft mbH & Co v. The Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990)
128	2009	<i>Electricite de France (EDF) International S.A. v. Republic of Hungary</i>	Hungary	France	ECT (1994)
129	2009	<i>European American Investment Bank AG v. The Slovak Republic</i>	Slovakia	Austria	Austria–Slovakia BIT (1990)
130	2009	<i>Les Laboratoires Servier, S.A.S., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Republic of Poland</i>	Poland	France	France–Poland BIT (1989)
131	2009	<i>Peter Franz Vöcklinghaus v. Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990)
132	2009	<i>Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany (I)</i> (ICSID Case No. ARB/09/6)	Germany	Sweden	ECT (1994)
133	2008	<i>Achmea B.V. (formerly Eureko B.V.) v. The Slovak Republic (I)</i> (PCA Case No. 2008-13)	Slovakia	Netherlands	Netherlands–Slovakia BIT (1991)
134	2008	<i>Austrian Airlines v. The Slovak Republic</i>	Slovakia	Austria	Austria–Slovakia BIT (1990)
135	2008	<i>Georg Nepolsky v. Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990)
136	2008	<i>HICEE B.V. v. The Slovak Republic</i> (PCA Case No. 2009-11)	Slovakia	Netherlands	Netherlands–Slovakia BIT (1991)
137	2008	<i>InterTrade Holding GmbH v. The Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990)
138	2008	<i>Mercuria Energy Group Limited v. Republic of Poland</i>	Poland	Cyprus	ECT (1994)
139	2008	<i>TRACO Deutsche Travertin Werke GmbH v. The Republic of Poland</i>	Poland	Germany	Germany–Poland BIT (1989)
140	2007	<i>Adria Beteiligungs v. Croatia</i>	Croatia	Austria	Austria–Croatia BIT (1997)
141	2007	<i>AES Summit Generation Limited and AES-Tisza Erőmű Kft. v. Republic of Hungary (II)</i> (ICSID Case No. ARB/07/22)	Hungary	United Kingdom	ECT (1994)
142	2007	<i>Electrabel S.A. v. The Republic of Hungary</i> (ICSID Case No. ARB/07/19)	Hungary	Belgium	ECT (1994)
143	2007	<i>Invesmart v. Czech Republic</i>	Czechia	Netherlands	Czechia–Netherlands BIT (1991)
144	2006	<i>Jan Oostergetel and Theodora Laurentius v. The Slovak Republic</i>	Slovakia	Netherlands	Netherlands–Slovakia BIT (1991)
145	2006	<i>Nordzucker AG v. The Republic of Poland</i>	Poland	Germany	Germany–Poland BIT (1989)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
146	2006	<i>Rail World LLC and others v. Republic of Estonia</i> (ICSID Case No. ARB/06/6)	Estonia	Netherlands; United States of America	Estonia–Netherlands BIT (1992); Estonia–United States of America BIT (1994)
147	2006	<i>Spyridon Roussalis v. Romania</i> (ICSID Case No. ARB/06/1)	Romania	Greece	Greece–Romania BIT (1997)
148	2006	<i>The Rompetrol Group N.V. v. Romania</i> (ICSID Case No. ARB/06/3)	Romania	Netherlands	Netherlands–Romania BIT (1994)
149	2006	<i>Vivendi v. Republic of Poland</i>	Poland	France	France–Poland BIT (1989)
150	2005	<i>EDF (Services) Limited v. Republic of Romania</i> (ICSID Case No. ARB/05/13)	Romania	United Kingdom	Romania–United Kingdom BIT (1995)
151	2005	<i>European Media Ventures SA v. The Czech Republic</i>	Czechia	Luxembourg	BLEU (Belgium–Luxembourg Economic Union)–Czechia BIT (1989)
152	2005	<i>Hrvatska Elektroprivreda d.d. v. Republic of Slovenia</i> (ICSID Case No. ARB/05/24)	Slovenia	Croatia	ECT (1994)
153	2005	<i>Ioan Micula, Viorel Micula and others v. Romania (I)</i> (ICSID Case No. ARB/05/20)	Romania	Sweden	Romania–Sweden BIT (2002)
154	2005	<i>K+ Venture Partners v. Czech Republic</i>	Czechia	Netherlands	Czechia–Netherlands BIT (1991)
155	2005	<i>Mittal Steel Company N.V. v. Czech Republic</i>	Czechia	Netherlands	Czechia–Netherlands BIT (1991)
156	2005	<i>Pren Nreka v. Czech Republic</i>	Czechia	Croatia	Croatia–Czechia BIT (1996)
157	2005	<i>Rupert Joseph Binder v. Czech Republic</i>	Czechia	Germany	Czechia–Germany BIT (1990)
158	2004	<i>Eastern Sugar B.V. v. The Czech Republic</i> (SCC Case No. 088/2004)	Czechia	Netherlands	Czechia–Netherlands BIT (1991)
159	2004	<i>Interbrew v. Slovenia</i> (ICSID Case No. ARB/04/17)	Slovenia	Netherlands	Netherlands–Slovenia BIT (1996)
160	2004	<i>OKO Pankki Oyj and others (formerly OKO Osuuspankki Keskuspankki Oyj and others) v. Republic of Estonia</i> (ICSID Case No. ARB/04/6)	Estonia	Finland	Estonia–Germany BIT (1992); Estonia–Finland BIT (1992)
161	2003	<i>ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary</i> (ICSID Case No. ARB/03/16)	Hungary	Cyprus	Cyprus–Hungary BIT (1989)
162	2003	<i>Eureko B.V. v. Republic of Poland</i>	Poland	Netherlands	Netherlands–Poland BIT (1992)
163	2003	<i>Plama Consortium Limited v. Republic of Bulgaria</i> (ICSID Case No. ARB/03/24)	Bulgaria	Cyprus	ECT (1994); Bulgaria–Cyprus BIT (1987)
164	2002	<i>William Nagel v. The Czech Republic</i> (SCC Case No. 049/2002)	Czechia	United Kingdom	Czechia–United Kingdom BIT (1990)
165	2001	<i>AES Summit Generation Limited v. Republic of Hungary (I)</i> (ICSID Case No. ARB/01/4)	Hungary	United Kingdom	ECT (1994); Hungary–United Kingdom BIT (1987)
166	2001	<i>Nykomb Synergetics Technology Holding AB v. The Republic of Latvia</i>	Latvia	Sweden	ECT (1994)
167	2001	<i>Saluka Investments BV v. The Czech Republic</i>	Czechia	Netherlands	Czechia–Netherlands BIT (1991)
168	2000	<i>CME Czech Republic B.V. v. The Czech Republic</i>	Czechia	Netherlands	Czechia–Netherlands BIT (1991)
169	1999	<i>Swembalt AB, Sweden v. The Republic of Latvia</i>	Latvia	Sweden	Latvia–Sweden BIT (1992)
170	1998	<i>Lutz Ingo Schaper v. Republic of Poland</i>	Poland	Germany	Germany–Poland BIT (1989)

No.	Year of initiation	Full case name	Respondent State	Home State of claimant	Applicable IIA
171	1997	<i>Ceskoslovenska Obchodni Banka, a.s. v. The Slovak Republic</i> (ICSID Case No. ARB/97/4)	Slovakia	Czechia	Czechia–Slovakia BIT (1992)
172	1996	<i>France Telecom v. Republic of Poland</i>	Poland	France	France–Poland BIT (1989)
173	1996	<i>Saar Papier Vertriebs GmbH v. Republic of Poland (II)</i>	Poland	Germany	Germany–Poland BIT (1989)
174	1994	<i>Saar Papier Vertriebs GmbH v. Republic of Poland (I)</i>	Poland	Germany	Germany–Poland BIT (1989)

Source: UNCTAD, ISDS Navigator.

Annex 2. Mapping of principal issues discussed in 49 decided intra-EU arbitrations⁵

Key information about each case is available at: <http://investmentpolicyhub.unctad.org/ISDS/>

No.	Short case name	Outcome	Principal issues and tribunals' rulings
1	<i>A11Y v. Czechia</i>	Decided in favour of State	<p>Decision on Jurisdiction, 21 February 2017; Award, 29 June 2018</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> Whether the scope of the ISDS clause in the BIT precludes claims for alleged breaches of the FET, full protection and security (FPS) and national treatment (NT) obligations (Yes); whether the narrow scope of jurisdiction can be expanded by applying the MFN clause (No) Whether the claimant, majority owned by a Czech national, met the definition of a protected United Kingdom investor under the BIT (Yes) Whether the claimant complied with the BIT's cooling-off period (Yes) Whether the Czechia–United Kingdom BIT was terminated as a result of the respondent's accession to the EU (No) Whether the claimant made an investment in the host State (allegedly it did not contribute any resources) (Yes) <p><u>Merits</u></p> <ol style="list-style-type: none"> Whether the challenged conduct constituted indirect expropriation (No) <p>Topics discussed:</p> <ul style="list-style-type: none"> Indirect expropriation Discriminatory measures <i>Bona fide</i> regulatory measures
2	<i>Accession Mezzanine v. Hungary</i>	Decided in favour of State	<p>Award, 17 April 2015</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> Whether the tribunal's jurisdiction is limited to claims of expropriation (Yes) Whether the claimants had rights to the alleged object of the expropriation (a right to be awarded a new broadcasting agreement upon the previous agreement's expiry) (No)
3	<i>Achmea v. Slovakia (I)</i>	Decided in favour of investor	<p>Award on Jurisdiction, Arbitrability and Suspension, 26 October 2010; Award, 7 December 2012</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> Whether the Netherlands–Slovakia BIT remains applicable after Slovakia's accession to the EU (Yes) Whether an insurance portfolio qualifies as investment protected under the BIT (Yes)

⁵ In section 2, this IIA Issues Note reviewed intra-EU arbitrations decided by tribunals (i.e. excluding pending, settled or discontinued cases) and for which the arbitral decisions are publicly available. In total, as of 31 July 2018, there were 49 such cases.

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>3. Whether the investment was made in violation of Slovak law (No)</p> <p><u>Merits</u></p> <p>4. Whether the challenged measures breached the BIT (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Right to generate/distribute profits • Temporary deprivation <p><u>Damages</u></p> <p>5. What compensation should be paid to the claimant</p>
4	<i>Achmea v. Slovakia (II)</i>	Decided in favour of State	<p>Award on Jurisdiction and Admissibility, 20 May 2014</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether there is a legal dispute between the parties (the challenged measure has not yet been adopted by the State) (Yes)</p> <p>2. Whether the claimant made a <i>prima facie</i> case showing a violation of the Treaty (No)</p>
5	<i>ADC v. Hungary</i>	Decided in favour of investor	<p>Award, 2 October 2006</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the claims are contractual in nature and may not be subject to BIT arbitration (No)</p> <p>2. Whether the claimants made an investment in Hungary within the definition of the BIT and the ICSID Convention (Yes)</p> <p>3. Whether the claimants (Cypriot companies) qualify as investors under the Cyprus-Hungary BIT if their ultimate owners are Canadian (Yes)</p> <p><u>Merits</u></p> <p>4. Whether the premature termination of the contract for airport management constituted an unlawful expropriation and breached other BIT provisions (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Right to regulate • Public purpose • Due process • Discrimination <p><u>Damages</u></p> <p>5. What amount of compensation should be paid to the claimants</p>
6	<i>AES v. Hungary (II)</i>	Decided in favour of State	<p>Award, 23 September 2010</p> <p><u>Merits</u></p> <p>1. Whether the measures challenged breached the BIT (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Right to regulate • Reasonableness of measures • Due process
7	<i>Anglia v. Czechia</i>	Decided in favour of State	<p>Final Award, 10 March 2017</p> <p><u>Jurisdiction</u></p> <p>1. Whether Czechia's accession to the EU entailed termination of the BIT (No)</p> <p>2. Whether an arbitral award may constitute an investment under the BIT (Yes)</p> <p>3. Whether the scope of the BIT's ISDS clause can be expanded by applying the MFN provision (No)</p> <p><u>Merits</u></p>

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>4. Whether conduct of Czech courts deprived the claimant of the value of the 1997 arbitral award and amounted to indirect (creeping) expropriation (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Denial of justice • Indirect expropriation
8	<i>Antaris Solar and Göde v. Czechia</i>	Decided in favour of State	<p>Award, 2 May 2018</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the solar levy is a tax for the purposes of the ECT and therefore is excluded from the tribunal's jurisdiction (No)</p> <p><u>Merits</u></p> <p>2. Whether the challenged measures breached the ECT and the BIT (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Right to regulate • Speculative investment (made at the time when regulatory changes were "in the air"/ publicly mooted)
9	<i>Antin v. Spain</i>	Decided in favour of investor	<p>Award, 15 June 2018</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the tribunal has jurisdiction over intra-EU disputes (Yes)</p> <p>2. Whether certain specific interests indirectly owned by the claimants constitute part of their investment (Yes)</p> <p>3. Whether the tribunal has jurisdiction over claims involving taxation measures, specifically the 7% tax created by Law 15/2012 (No)</p> <p>4. Whether the requirements of the cooling-off period were met (Yes)</p> <p><u>Merits</u></p> <p>5. Whether the challenged measures breached the ECT (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Right to regulate <p><u>Damages</u></p> <p>6. What amount of compensation should be paid to the claimants</p>
10	<i>Austrian Airlines v. Slovakia</i>	Decided in favour of State	<p>Final Award, 9 October 2009</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the tribunal's jurisdiction is limited to disputes concerning compensation for expropriation and does not cover the question of whether an expropriation occurred (Yes)</p> <p>2. Whether the tribunal's jurisdiction can be expanded through the MFN provision (No)</p>
11	<i>Binder v. Czechia</i>	Decided in favour of State	<p>Award on Jurisdiction, 6 June 2007; Final Award, 15 July 2011</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether Czechia's accession to the EU implicitly terminated the intra-EU BIT between Czechia and Germany (No)</p> <p>2. Whether the claimant, who is a dual German and Czech citizen, qualifies as a German investor under the Czechia–Germany BIT (Yes)</p> <p><u>Merits</u></p> <p>3. Whether the challenged measures breached the BIT (No)</p> <p>Topics discussed:</p>

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<ul style="list-style-type: none"> • Fraudulent acts • Denial of justice • Legitimate expectations • Arbitrary/discriminatory measures • Expropriation
12	<i>Blusun v. Italy</i>	Decided in favour of State	<p>Award, 27 December 2016</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> 1. Whether the claimants' activity for the construction of a power plant qualified as an investment and whether the work had been undertaken lawfully (Yes) 2. Whether the claimants acted in bad faith in pursuing the project (No) 3. Whether the ECT applies to relations inter se of EU member States (Yes) <p><u>Merits</u></p> <ol style="list-style-type: none"> 4. Whether the challenged measures breached the ECT (No) <p>Topics discussed:</p> <ul style="list-style-type: none"> • Regulatory stability • Proportionality • Legitimate expectations • Causation • Expropriation
13	<i>Bosca v. Lithuania</i>	Neither investor nor the State (liability found but no damages awarded)	<p>Award, 17 May 2013</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> 1. Whether the claim is admissible despite the fact that the notice of arbitration did not include the claimant's address (Yes) 2. Whether the claim is time-barred under the doctrine of "extinctive prescription" (No) 3. Whether the claim is admissible despite the allegation that the notice of intent to arbitrate did not provide sufficient information on the nature or grounds of the claims (Yes) 4. Whether the conduct of the State Property Fund and its Director are attributable to the State (Yes) 5. Whether the claimant's pre-tender activities or its participation in the tender constitute an "investment" (Yes) 6. Whether the Italy-Lithuania BIT was terminated jointly by the contracting parties (No) <p><u>Merits</u></p> <ol style="list-style-type: none"> 7. Whether the challenged conduct breached the BIT (Yes) <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations <p><u>Damages</u></p> <ol style="list-style-type: none"> 8. Whether the claimant is entitled to compensation for lost opportunity resulting from the annulled tender (No)
14	<i>Busta v. Czechia</i>	Decided in favour of State	<p>Final Award, 10 March 2017</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> 1. Whether Czechia's accession to the EU entailed termination of the BIT (No) 2. Whether the scope of the BIT's ISDS clause can be expanded by applying the MFN provision (No) 3. Whether the claimants as shareholders have standing to bring claims in respect of loss or damage to company assets (Yes) 4. Whether an ISDS claim is precluded if a claim concerning the same subject-matter has already been decided by a host State court (No) 5. Whether the claimants' initiation of overlapping claims in two fora (domestic

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>court and ISDS) constitutes an abuse of process (No)</p> <p>6. Whether ISDS proceedings should be stayed until the proceedings in the Czech courts have been completed (No)</p> <p><u>Merits</u></p> <p>7. Whether the alleged failure of the police forces to prevent the unlawful removal of the goods from the claimants' warehouse by the claimants' business partner constitutes expropriation (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Expropriation
15	<i>Charanne and Construction Investments v. Spain</i>	Decided in favour of State	<p>Final Award, 21 January 2016</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the claimants have access to the tribunal in light of the ECT's fork-in-road clause, having submitted claims to the Spanish courts and the ECHR (Yes)</p> <p>2. Whether the claimants, since they are wholly controlled by Spanish nationals, qualify as investors under the ECT (Yes)</p> <p>3. Whether the dispute is an intra-EU dispute and is subject to the EU legal regime (No)</p> <p><u>Merits</u></p> <p>4. Whether the disputed measures breached the ECT (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectation of regulatory stability • Right to regulate
16	<i>Dan Cake v. Hungary</i>	Decided in favour of investor	<p>Decision on Jurisdiction and Liability, 24 August 2015; Award, 21 November 2017</p> <p><u>Merits</u></p> <p>1. Whether the host State court's refusal to convene a composition hearing (in the context of bankruptcy proceedings) breached the BIT (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Denial of justice
17	<i>Eastern Sugar v. Czechia</i>	Decided in favour of investor	<p>Partial Award, 27 March 2007; Final Award, 12 April 2007</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the Czechia–Netherlands BIT became inapplicable after Czechia's accession to the EU (No)</p> <p><u>Merits</u></p> <p>2. Whether the First, Second and Third Sugar Decrees breached the BIT (Yes – Third Sugar Decree)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Standard of review • Targeting investor under pressure from domestic lobby <p><u>Damages</u></p> <p>3. What amount of compensation should be paid to the claimant</p>
18	<i>ECE v. Czechia</i>	Decided in favour of State	<p>Final Award, 19 September 2013</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the claimant had an investment in the host State (Yes)</p> <p>2. Whether the claimant committed violations of host State law in the process of investment (Inconclusive – joined to the merits)</p> <p>3. Whether the tribunal had jurisdiction over the claims in respect of losses allegedly sustained by certain subsidiary companies of the claimant (Inconclusive)</p>

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>– joined to the merits)</p> <p>4. Whether the tribunal had jurisdiction over any claims based on events that predated the date of the making of the claimant's respective investments (Inconclusive – joined to the merits)</p> <p><u>Merits</u></p> <p>5. Whether the challenged conduct breached the BIT (No)</p> <p>6. Whether the challenged conduct caused the abandonment of the project (Redacted from award)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Expropriation • Arbitrary/discriminatory measures
19	<i>EDF v. Romania</i>	Decided in favour of State	<p>Award, 8 October 2009</p> <p><u>Merits</u></p> <p>1. Whether the conduct of two State-owned entities regarding the performance of the relevant contracts can be attributed to the respondent State (Yes)</p> <p>2. Whether the challenged measures breached the BIT (No)</p> <p>Topics addressed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Police powers (in the FET context)
20	<i>Eiser and Energía Solar v. Spain</i>	Decided in favour of investor	<p>Award, 4 May 2017</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the ECT applies to disputes involving investments made within the EU by investors from other EU countries (Yes)</p> <p>2. Whether the claimants contributed funds, incurred risks, and made a long-term investment (Yes)</p> <p>3. Whether the tribunal may entertain claims for alleged damage incurred by the operating companies in which the claimants hold minority shareholdings (Yes)</p> <p>4. Whether the tribunal may hear claims involving taxation measures, specifically the 7% tax created by Law 15/2012 (No)</p> <p>5. Whether the claimants must refer their expropriation claims involving the 7% tax under Law 15/2012 to the "Competent Tax Authority" as required by the ECT (Yes)</p> <p>6. Whether the claimants complied with ECT's requirement to observe a three-month waiting period before initiating arbitration (Yes)</p> <p><u>Merits</u></p> <p>7. Whether the challenged measures breached the ECT (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectation of regulatory stability • Right to regulate
21	<i>Electrabel v. Hungary</i>	Decided in favour of State	<p>Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012; Award, 25 November 2015</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the claims, which involve questions of EU law, may be adjudicated by an international tribunal (Yes)</p> <p>2. Whether the claimant's shareholding in Dunamenti, and contractual rights under the Power Purchase Agreement (PPA), constituted investments under the ECT (Yes)</p> <p><u>Merits</u></p> <p>3. Whether the termination of the PPA constituted an expropriation (No)</p> <p>4. Whether the termination of the PPA breached the FET standard (No)</p>

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>5. Whether certain other challenged measures breached the ECT (reduction of price paid under the PPA; reintroduction of regulated prices; imposition of "stranded costs") (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations of regulatory stability • Specific representation or assurance by the State • Arbitrariness • Proportionality • Right to regulate (legitimate regulatory interest)
22	<i>Emmis v. Hungary</i>	Decided in favour of State	<p>Award, 16 April 2014</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the tribunal's jurisdiction is limited to claims of expropriation (Yes)</p> <p>2. Whether the claimants held property rights capable of expropriation (rights entitling them to the granting of a new broadcasting licence) (No)</p>
23	<i>EMV v. Czechia</i>	Decided in favour of State	<p>Award on Jurisdiction, 15 May 2007; Partial Award on Liability, 8 July 2009; Final Award (Costs)</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the tribunal has jurisdiction to determine if there was an expropriation (the ISDS clause in the BIT limited arbitrable disputes to issues of compensation for expropriation) (Yes)</p> <p>2. Whether the BIT's dispute settlement clause gives the tribunal jurisdiction to determine issues concerning the other standards of treatment found in the BIT (No)</p> <p><u>Merits</u></p> <p>3. Whether the alleged blackmailing by the investor of a Czech member of parliament with a view to influence the media council, should bar the investor's claim on public policy grounds (No)</p> <p>4. Whether the investor's claimed contractual rights against the local partner amounted to an investment under the BIT (Yes)</p> <p>5. Whether the challenged conduct amounted to expropriation of the claimant's investment (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Indirect expropriation
24	<i>Enkev Beheer v. Poland</i>	Decided in favour of State	<p>First Partial Award, 29 April 2014; Final Award on Costs, 13 June 2014</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether Enkev Polska (the local subsidiary) can be added as a co-claimant to the proceedings (No)</p> <p>2. Whether the investment should be limited to the claimant's shareholdings in Enkev Polska and the rights derived therefrom (Yes), or whether it may act on its subsidiary's behalf for harm suffered directly by its subsidiary (No)</p> <p>3. Whether Enkev Polska's goodwill and know-how, as well as the claimant's own management of Enkev Polska constitute separate investments (No)</p> <p>4. Whether the claimant properly notified the respondent of the dispute and complied with its obligation to seek amicable dispute resolution prior to its initiation of arbitration (No, but this did not defeat jurisdiction)</p> <p><u>Merits</u></p> <p>5. Whether the claimant was directly or indirectly deprived of its rights in Enkev Polska's shares (No)</p> <p>6. Whether the City of Lodz breached any BIT provision by its intention to expropriate Enkev Polska's premises (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Imminent expropriation

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<ul style="list-style-type: none"> • Indirect expropriation • Public interest • Due process • Just compensation
25	<i>EURAM Bank v. Slovakia</i>	Decided in favour of State	<p>Award on Jurisdiction, 22 October 2012; Second Award on Jurisdiction, 4 June 2014; Award on Costs, 20 August 2014</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> 1. Whether the Austria–Slovakia BIT remains applicable after Slovakia’s accession to the EU (Yes) 2. Whether the claimant had a qualifying investment (it owned shares through its subsidiary, EIC, a company incorporated in Slovakia) (Yes) 3. Whether the tribunal’s jurisdiction is limited to disputes concerning compensation for expropriation and does not cover the question of whether an expropriation had occurred (Yes) 4. Whether the scope of jurisdiction can be expanded through MFN (No) 5. Whether the disputing parties had agreed to have the dispute settled by a Slovak court (No) 6. Whether the claimant waived its right to arbitrate by pursuing a claim in Slovak courts after the first award on jurisdiction (Yes)
26	<i>Gavazzi v. Romania</i>	Decided in favour of investor	<p>Decision on Jurisdiction, Admissibility and Liability, 21 April 2015; Award, 18 April 2017</p> <p><u>Jurisdiction</u></p> <ol style="list-style-type: none"> 1. Whether the purchase of shares qualifies as investment (Yes) 2. Whether a claim to money under an arbitral award rendered in claimants’ favour constitutes an investment (Yes) 3. Whether the claim is time-barred (No) 4. Whether tribunal has jurisdiction over the respondent State’s counterclaim (No) 5. Whether decisions of the Romanian courts constitute res judicata or issue estoppel for the purposes of ISDS proceedings (No) <p><u>Merits</u></p> <ol style="list-style-type: none"> 6. Whether Romanian authorities’ alleged failure to carry out the restructuring of the company’s debt, which had been promised to the claimants, violated the BIT’s FET obligation and constituted expropriation (Yes) <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Expropriation • Denial of justice (effective means of asserting rights)
27	<i>Gavrilovic v. Croatia</i>	Decided in favour of State	<p>Award, 25 July 2018</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> 1. Whether each of the claimants is an “investor” who has made an “investment” under the ICSID convention and the BIT (Yes) 2. Whether the tribunal should deny jurisdiction because the investment had been made with violations of host State law (No) <p><u>Merits</u></p> <ol style="list-style-type: none"> 3. Whether the challenged measures constituted an expropriation (Yes – some properties only) <p>Topics discussed:</p> <ul style="list-style-type: none"> • Expropriation • Legitimate expectations <p><u>Damages</u></p> <ol style="list-style-type: none"> 4. What amount of compensation should be paid to the claimants

No.	Short case name	Outcome	Principal issues and tribunals' rulings
28	<i>HICEE v. Slovakia</i>	Decided in favour of State	<p>Partial Award, 23 May 2011; Supplementary and Final Award, 17 October 2011</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> Whether the claimant's shareholdings held in the Slovak private insurance companies indirectly through a Slovak holding company are "investments" covered by the BIT (No) Whether the claimant can invoke protections of the BIT in any other way (No)
29	<i>InterTrade v. Czechia</i>	Decided in favour of State	<p>Final Award, 7 June 2012</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> Whether the claimant had sold its investment prior to the measures challenged (No) Whether the claimant made an investment (contribution of assets) in the territory of the respondent (Yes) Whether the claimant's investment was fraudulent (No) Whether the acts of LCR (a State-owned entity responsible for day-to-day management of State forests) are attributable to the respondent State (No)
30	<i>Invesmart v. Czechia</i>	Decided in favour of State	<p>Award, 26 June 2009</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> Whether, having failed to invest €90 million as per the contract, the claimant still had an investment under the BIT (Yes) Whether the claimant was estopped from contending that its investment was valid since it had argued in domestic court proceedings that the investment was in fact void (No) Whether jurisdiction should be denied because the claimant had no genuine connection to its country of registration, the Netherlands (No) <p><u>Merits</u></p> <ol style="list-style-type: none"> Whether the refusal to provide state aid breached the BIT (No) <p>Topics discussed:</p> <ul style="list-style-type: none"> Legitimate expectations Expropriation <i>Bona fide</i> regulation
31	<i>Isolux v. Spain</i>	Decided in favour of State	<p>Award, 12 July 2016</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> Whether the ECT applies to disputes involving intra-EU investments (Yes) Whether the claimant qualifies as an investor under the ECT if it is ultimately owned by Spanish and Canadian companies (Yes) Whether the claimant made an investment in Spain (Yes) Whether the claimant abused the process by setting up a company in the Netherlands to be able to access the ECT's protections (No) Whether respondent may deny benefits of the ECT to the claimant (No) Whether the tribunal may hear claims involving taxation measures, specifically the 7% tax created by Law 15/2012 (No) <p><u>Merits</u></p> <ol style="list-style-type: none"> Whether the disputed measures breached the ECT (No) <p>Topics discussed:</p> <ul style="list-style-type: none"> Legitimate expectation of regulatory stability Right to regulate
32	<i>JSW Solar and Wirtgen v. Czechia</i>	Decided in favour of State	<p>Final Award, 11 October 2017</p> <p><u>Jurisdiction</u></p> <ol style="list-style-type: none"> Whether a "limited partnership" (not a juridical person) qualifies as an investor (Yes) Whether the BIT must be regarded as terminated at the time of Czechia's

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>accession to the EU (No); and whether certain of the BIT's provisions are incompatible with the EU Treaty (No)</p> <p><u>Merits</u></p> <p>3. Whether by abrogating the tax incentives and introducing the solar levy, the respondent violated the BIT (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Specific representation or assurance by the State • Regulatory stability • Right to regulate
33	<i>Masdar Solar v. Spain</i>	Decided in favour of investor	<p>Award, 18 May 2018</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the actions of the claimant, a company controlled by the Government of Abu Dhabi, are attributable to the State of Abu Dhabi and therefore not subject to jurisdiction of the tribunal (No)</p> <p>2. Whether the claimant made an investment (allegedly not having contributed economic resources of its own) (Yes)</p> <p>3. Whether the respondent may deny benefits to the claimant (No)</p> <p>4. Whether the tribunal has jurisdiction over claims involving taxation measures, specifically the 7% tax created by Law 15/2012 (No)</p> <p>5. Whether the ECT applies to disputes involving intra-EU investments (Yes)</p> <p>6. Whether the ECT's provision on investor–State arbitration is compatible with EU law (Yes)</p> <p><u>Merits</u></p> <p>7. Whether the challenged measures breach the ECT (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Right to regulate <p><u>Damages</u></p> <p>8. What amount of compensation should be paid to the claimant</p>
34	<i>Micula v. Romania (I)</i>	Decided in favour of investor	<p>Decision on Jurisdiction and Admissibility, 24 September 2008; Final Award, 11 December 2013</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the two individual claimants were Swedish nationals eligible for BIT protection (respondent argued that they were effectively Romanian nationals) (Yes)</p> <p>2. Whether investment incentives are investments in themselves and can be expropriated (Not decided at this stage)</p> <p>3. Whether claimants showed that they had suffered harm resulting from respondent's actions (Yes)</p> <p>4. Whether some of the challenged actions occurred prior to the Romania–Sweden BIT's entry into force (No)</p> <p>5. Whether the tribunal has the power to grant restitution of the legal framework (Yes)</p> <p><u>Merits</u></p> <p>6. Whether the early revocation of incentives breached the BIT (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Umbrella clause • Legitimate expectations • Unreasonable conduct • Bad faith

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<ul style="list-style-type: none"> Transparent and consistent conduct <p><u>Damages</u> 7. What amount of compensation should be paid to the claimants 8. To whom compensation should be paid</p>
35	<i>Nordzucker v. Poland</i>	Neither investor nor the State (liability found but no damages awarded)	<p>Partial Award (Jurisdiction), 10 December 2008; Second Partial Award (Merits), 28 January 2009; Third Partial and Final Award (Damages and Costs), 23 November 2009</p> <p><u>Jurisdiction and admissibility</u> 1. Whether the Protocol to the BIT, which widened the tribunal's jurisdictional scope but was concluded after the dispute arose, allowed the tribunal to adjudicate claims other than expropriation (Yes) 2. Whether the claimant's attempted – but uncompleted – acquisition of shares in two companies constitutes an investment covered by the BIT and its arbitration provision (Yes)</p> <p><u>Merits</u> 3. Whether the Ministry of Treasury's conduct after the tender breached the BIT (Yes)</p> <p>Topics discussed: <ul style="list-style-type: none"> Transparency in communication with the claimant </p> <p><u>Damages</u> 4. Whether the treaty breach caused losses to the claimant (No)</p>
36	<i>Novenergia v. Spain</i>	Decided in favour of investor	<p>Final Award, 15 February 2018</p> <p><u>Jurisdiction and admissibility</u> 1. Whether the tribunal has jurisdiction over intra-EU disputes (Yes) 2. Whether the tribunal has jurisdiction over claims involving taxation measures, specifically the 7% tax created by Law 15/2012 (No)</p> <p><u>Merits</u> 3. Whether the challenged measures breached the ECT (Yes)</p> <p>Topics: <ul style="list-style-type: none"> Legitimate expectations Right to regulate </p> <p><u>Damages</u> 4. What amount of compensation should be paid to the claimant</p>
37	<i>OKO v. Estonia</i>	Decided in favour of investor	<p>Award, 19 November 2007</p> <p><u>Jurisdiction and admissibility</u> 1. Whether the loans provided by the claimants qualify as investments under the two applicable BITs and under the ICSID Convention (Yes)</p> <p><u>Merits</u> 2. Whether the respondent's failure to repay the loan to the claimants breached the applicable BITs (Yes)</p> <p>Topics discussed: <ul style="list-style-type: none"> Representation provided by the State </p> <p><u>Damages</u> 3. What amount of compensation should be paid to the claimants</p>
38	<i>Oostergetel v. Slovakia</i>	Decided in favour of State	<p>Decision on Jurisdiction, 30 April 2010; Final Award, 23 April 2012</p> <p><u>Jurisdiction and admissibility</u></p>

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>1. Whether the Netherlands–Slovakia BIT was terminated upon Slovakia's accession to the EU (No)</p> <p>2. Whether the claimants, after having resided for many years in Belgium, still qualified for BIT protection as Dutch nationals (Yes)</p> <p>3. Whether the investments made through intermediary companies (not Dutch) are protected under the Netherlands–Slovakia BIT (Yes)</p> <p>4. Whether the investment fulfils the BIT definition and the Salini test (Yes)</p> <p>5. Whether the investment was made contrary to Slovak laws (No)</p> <p><u>Merits</u></p> <p>7. Whether the conduct of bankruptcy trustees can be attributed to the State (No)</p> <p>8. Whether the challenged conduct of the Finance Minister, the Tax Authority and the Slovak Judiciary – individually or collectively – breached the BIT (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Legitimate expectations • Denial of justice • Bad faith • Expropriation
39	<i>PL Holdings v. Poland</i>	Decided in favour of investor	<p>Partial Award, 28 June 2017</p> <p><u>Jurisdiction</u></p> <p>1. Whether the claimant is an investor within the meaning of the Treaty (the respondent alleged that the claimant was a shell company and the actual investor was another entity registered in Jersey) (Yes)</p> <p>2. Whether Poland's EU Accession Treaty superseded the BIT (No)</p> <p><u>Merits</u></p> <p>3. Whether the respondent's actions (18-month deprivation of voting rights on claimant's shares and subsequent requirement to sell the shares) amounted to expropriation (Yes)</p> <p>4. Whether the respondent's actions were proportionate to the public welfare objective allegedly pursued (No)</p> <p>5. Whether the respondent violated the claimant's procedural rights (Yes)</p> <p>6. Whether the claimant is barred from relief due to failure to exhaust available remedies (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Indirect expropriation • Proportionality • Public purpose <p><u>Damages</u></p> <p>7. What compensation is due for the damage suffered by the claimant</p>
40	<i>Plama v. Bulgaria</i>	Decided in favour of State	<p>Decision on Jurisdiction, 8 February 2005; Award, 27 August 2008</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether treaty benefits under the ECT can be denied to the claimant retrospectively after the arbitration has been initiated (No)</p> <p>2. Whether the MFN provision of the Bulgaria–Cyprus BIT can be interpreted as providing consent to ICSID arbitration (No)</p> <p><u>Merits</u></p> <p>3. Whether the claimant is entitled to the ECT's substantive protections in light of its misrepresentations to the Bulgarian government at the time of making the investment (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Misrepresentation

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<ul style="list-style-type: none"> • Good faith • No one should benefit from their own wrongdoing • International public policy <p>4. If the claimant were entitled to the ECT protections, would the challenged measures breach the ECT (No)</p>
41	<i>Poštová banka and Istrokapital v. Greece</i>	Decided in favour of State	<p>Award, 9 April 2015</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the tribunal has jurisdiction over claims of the first claimant (Istrokapital), a shareholder in Poštová banka that owned Greek government bonds (No)</p> <p>2. Whether the claimant's (Poštová banka) rights under Greek government bonds qualify as an investment under the BIT (No)</p>
42	<i>Rompetrol v. Romania</i>	Neither investor nor the State (liability found but no damages awarded)	<p>Decision on Respondent's Preliminary Objections on Jurisdiction and Admissibility, 18 April 2008; Award, 6 May 2013</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the tribunal has jurisdiction over a claim brought by an alleged Dutch "shell" company, while Mr. Patriciu, a Romanian resident and Romanian national, has the dominant control over the assets in question (Yes)</p> <p>2. Whether the tribunal has jurisdiction over a claim arising out of an investment, made with Romanian, not international, funds (Yes)</p> <p>3. Whether the claims are premature (investigation is on-going) and/or constitute an abuse of process (No)</p> <p><u>Merits</u></p> <p>4. Whether the respondent breached the BIT by a pattern of wrongful conduct during the course of a criminal investigation (Yes)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Harassment and misconduct by the State <p><u>Damages</u></p> <p>5. Whether the conduct in breach caused economic loss or damage to the claimant (No)</p>
43	<i>Roussalis v. Romania</i>	Decided in favour of State	<p>Award, 7 December 2011</p> <p><u>Merits</u></p> <p>1. Whether the conduct of the respondent's various agencies breached the BIT (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Arbitrary measures • Expropriation <p><u>Counterclaim</u></p> <p>2. Whether tribunal has jurisdiction over the respondent's counterclaim that the claimant and his companies had not complied with their obligation to invest additional funds (No)</p>
44	<i>Servier v. Poland</i>	Decided in favour of investor	<p>Interim Award on Jurisdiction, 3 December 2010; Award, 14 February 2012</p> <p><u>Jurisdiction and admissibility</u></p> <p>1. Whether the MFN clause expands the scope of the tribunal's jurisdiction beyond matters of expropriation (No; heavily redacted section)</p> <p>2. Whether the claimants had an investment in Poland (Yes; heavily redacted section)</p> <p><u>Merits</u></p> <p>3. Whether the denial of authorisation amounted to indirect expropriation or</p>

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>constituted a normal exercise of its "police powers" to regulate public health (partially redacted section)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Proportionality • Bad faith / unreasonableness • Indirect expropriation • Police powers doctrine <p><u>Damages</u></p> <p>4. What compensation should be paid to the claimant for unlawful expropriation of its investment (partially redacted)</p>
45	<i>ST-AD v. Bulgaria</i>	Decided in favour of State	<p>Award on Jurisdiction, 18 July 2013</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> 1. Whether the claimant has made an investment (Yes – but certain assets excluded) 2. Whether the events giving rise to the dispute took place before the claimant became a German investor (Yes) 3. Whether the respondent only gave its consent to arbitrate disputes concerning the amount of compensation owed for property found to have been expropriated (as determined by a Bulgarian court) (Yes) 4. Whether the MFN clause permits an expansion of jurisdiction given in the BIT (No) 5. Whether the claimant attempted to "manufacture jurisdiction" over the dispute or has in other ways abused the arbitration process (Yes)
46	<i>UAB v. Latvia</i>	Decided in favour of investor	<p>Award, 22 December 2017</p> <p><u>Jurisdiction</u></p> <ol style="list-style-type: none"> 1. Whether the claimant lacks internal authorisation for instituting the ISDS proceedings (No) 2. Whether there is a "dispute" under Article 25(1) of the ICSID Convention (Yes) <p><u>Merits</u></p> <ol style="list-style-type: none"> 3. Whether the alleged conduct can be attributed to the respondent (Yes) 4. Whether the respondent's actions breached the BIT's FET standard, FPS standard and prohibition of arbitrary and discriminatory measures (Yes) 5. Whether the respondent's actions constituted an expropriation of the claimant's investment (No) <p>Topics discussed:</p> <ul style="list-style-type: none"> • Arbitrary measures • Good faith • Due process • Expropriation • Regulatory policy powers <p><u>Damages</u></p> <p>6. What compensation the respondent must pay to the claimant for breaching the BIT</p>
47	<i>Vigotop v. Hungary</i>	Decided in favour of State	<p>Award, 1 October 2014</p> <p><u>Merits</u></p> <ol style="list-style-type: none"> 1. Whether the respondent had public policy reasons for the termination of the concession contract (Yes) 2. Whether the respondent had contractual grounds for the termination of the concession contract (Yes) 3. Whether the respondent abused its contractual termination right (No) 4. Whether respondent's termination of the concession contract amounted to an

No.	Short case name	Outcome	Principal issues and tribunals' rulings
			<p>expropriation of claimant's investment (No)</p> <p>Topics discussed:</p> <ul style="list-style-type: none"> • Indirect expropriation • Public policy • Good faith • Discrimination
48	<i>Vöcklinghaus v. Czechia</i>	Decided in favour of State	<p>Final Award, 19 September 2011</p> <p><u>Jurisdiction and admissibility</u></p> <ol style="list-style-type: none"> 1. Whether loans to the local subsidiary constituted an investment (No) 2. Whether the claimant kept a beneficial interest in the loan receivables (No) 3. Whether investments funded by external sources were protected under the BIT (No) <p><u>Merits</u></p> <ol style="list-style-type: none"> 4. Whether the conduct of the Czech courts constituted denial of justice (No) <p>Topics discussed:</p> <ul style="list-style-type: none"> • Denial of justice • Legitimate expectations • Arbitrary measures
49	<i>WNC v. Czechia</i>	Decided in favour of State	<p>Award, 22 February 2017</p> <p><u>Jurisdiction</u></p> <ol style="list-style-type: none"> 1. Whether the BIT was terminated when Czechia acceded to the EU (No) 2. Whether the umbrella clause applies in the absence of a direct agreement between an investor and the State (the State had an agreement with a subsidiary company of the investor) (No) 3. Whether the umbrella clause covers State obligations arising out of general legislation addressed to the public (as opposed to a specific undertaking) (No) 4. Whether the scope of the umbrella clause can be expanded through the MFN clause (No) 5. Whether the tribunal has jurisdiction over the FET claim (No) <p><u>Merits</u></p> <ol style="list-style-type: none"> 6. Whether the respondent's actions have led to Skoda Export's insolvency and amounted to an expropriation of the claimant's investment (No) <p>Topics discussed:</p> <ul style="list-style-type: none"> • Misrepresentation • Unreasonableness • Police powers • Expropriation

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