

# The risks of including ISDS in TTIP – illustrations from the energy sector

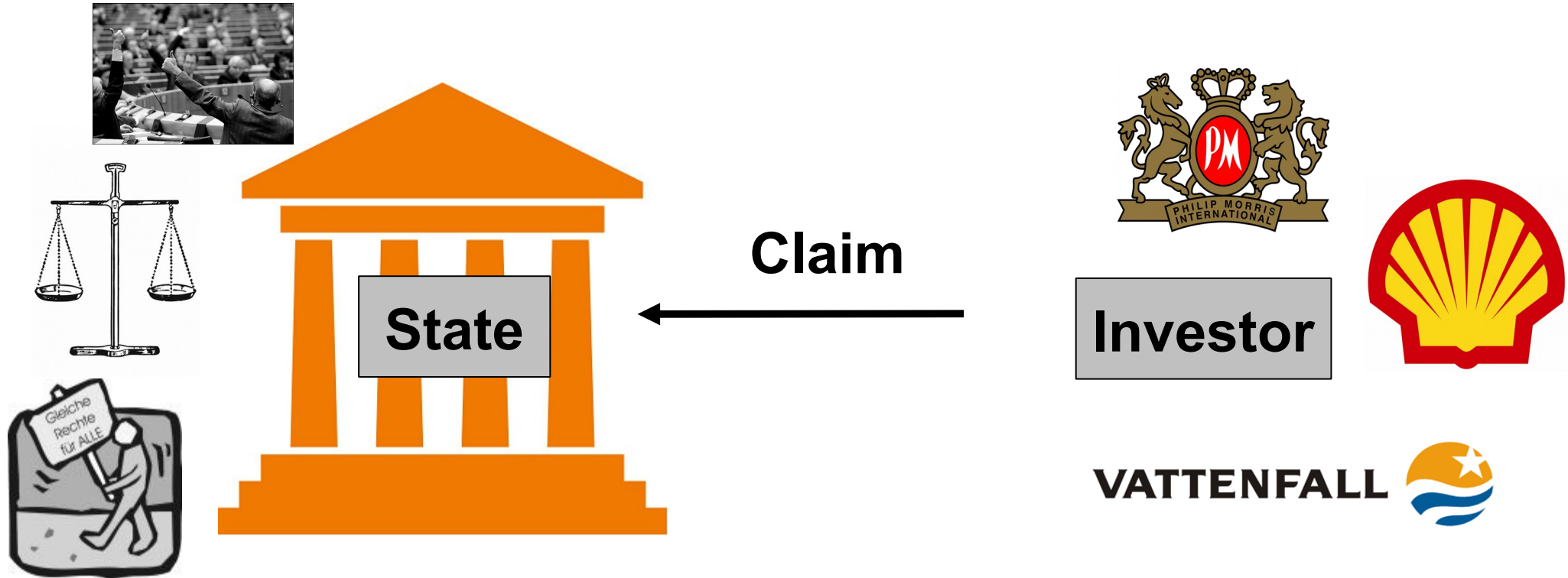


Pia Eberhardt, Corporate Europe Observatory  
ITRE hearing:  
“Impact of TTIP on ITRE policy areas”  
24 February 2016, European Parliament

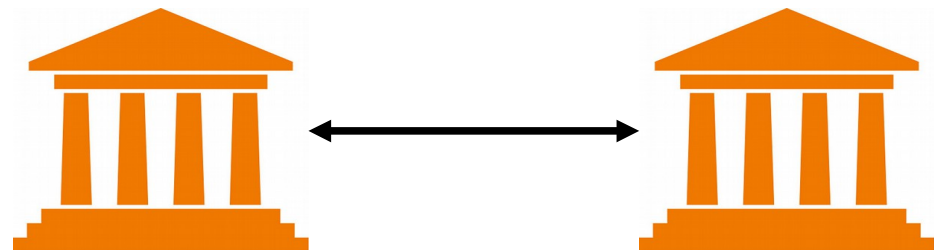
# Overview

- What is investor-state dispute settlement (ISDS)?
- Some examples of investor-state disputes in the energy sector
- What could happen in the energy sector if ISDS was included in TTIP?
- Doesn't the EC address the risks?

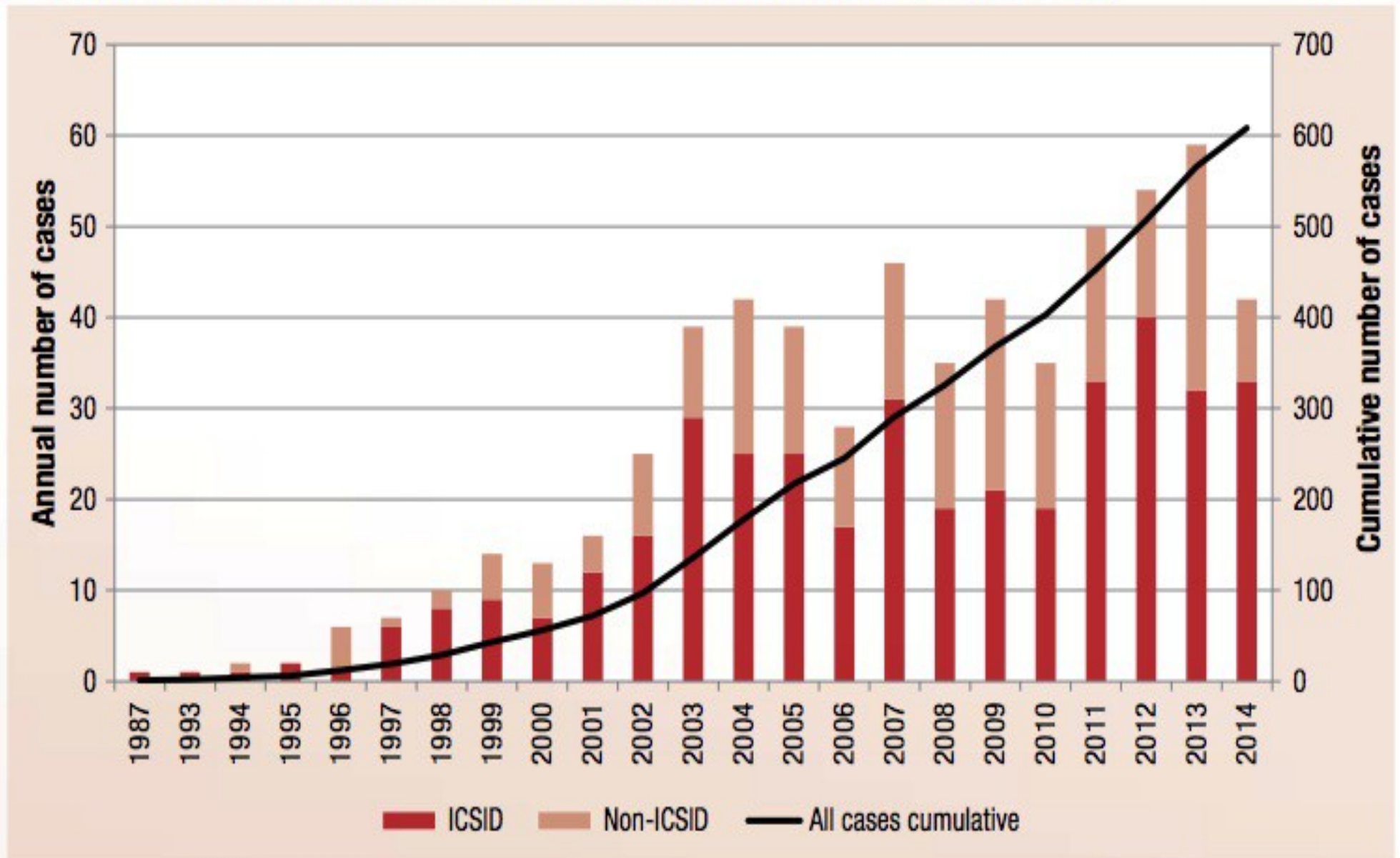
# Investor-state dispute settlement



**International investment treaties**

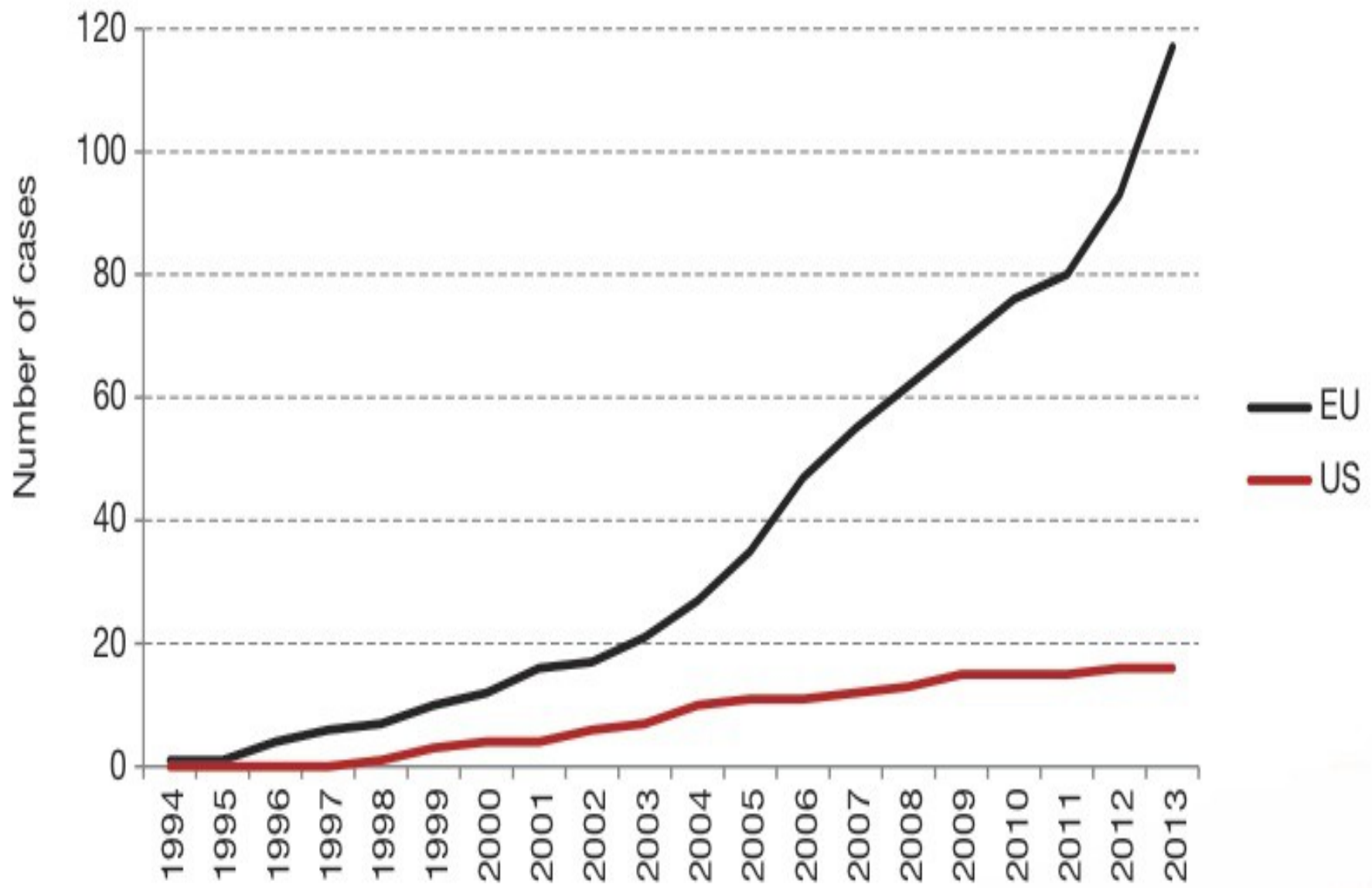


**Figure 2. Known ISDS cases, annual and cumulative (1987–2014)**



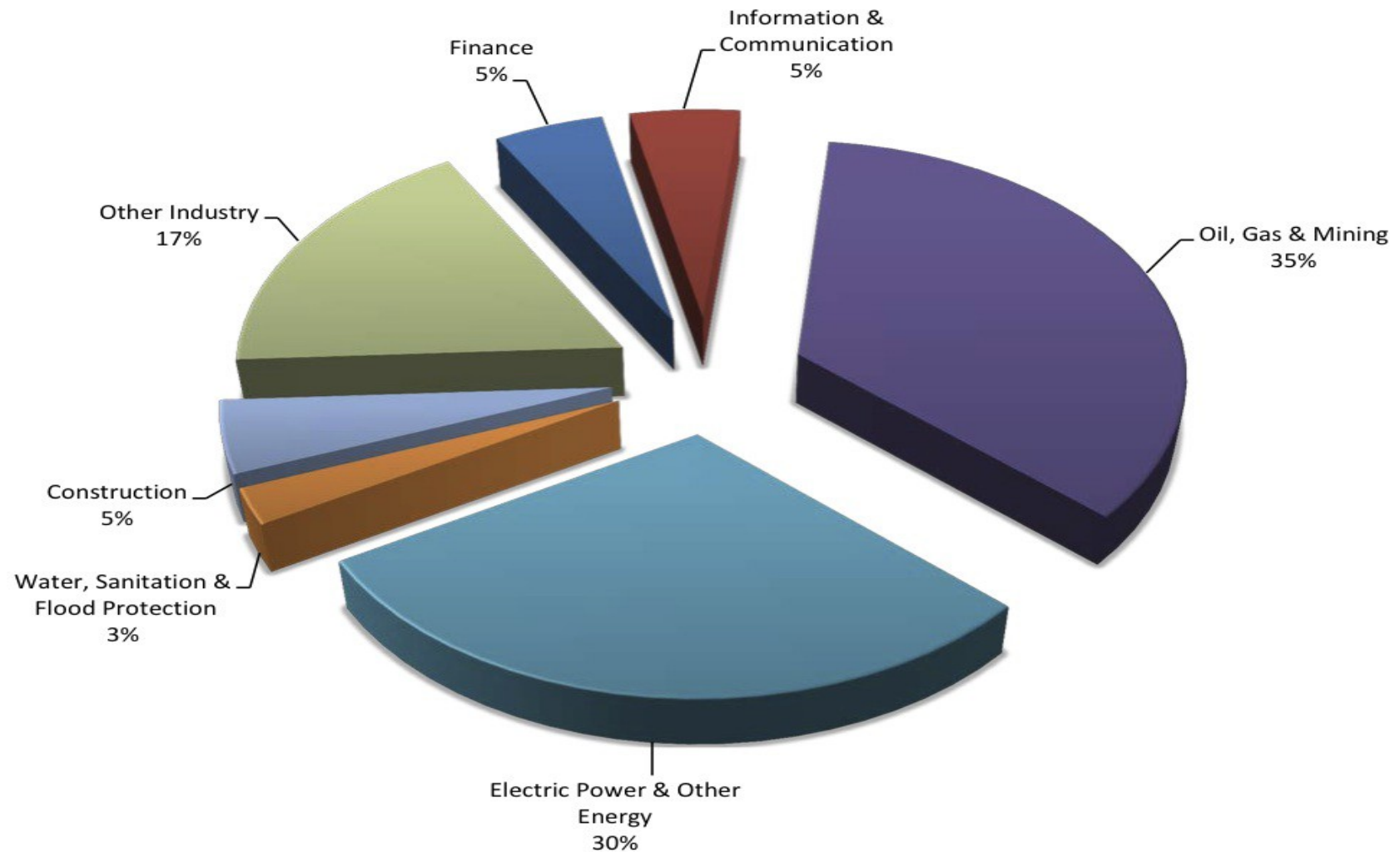
Source: UNCTAD, ISDS database.  
Note: Preliminary data for 2014.

**Figure 5. ISDS cases against the US and EU Member States, cumulative**



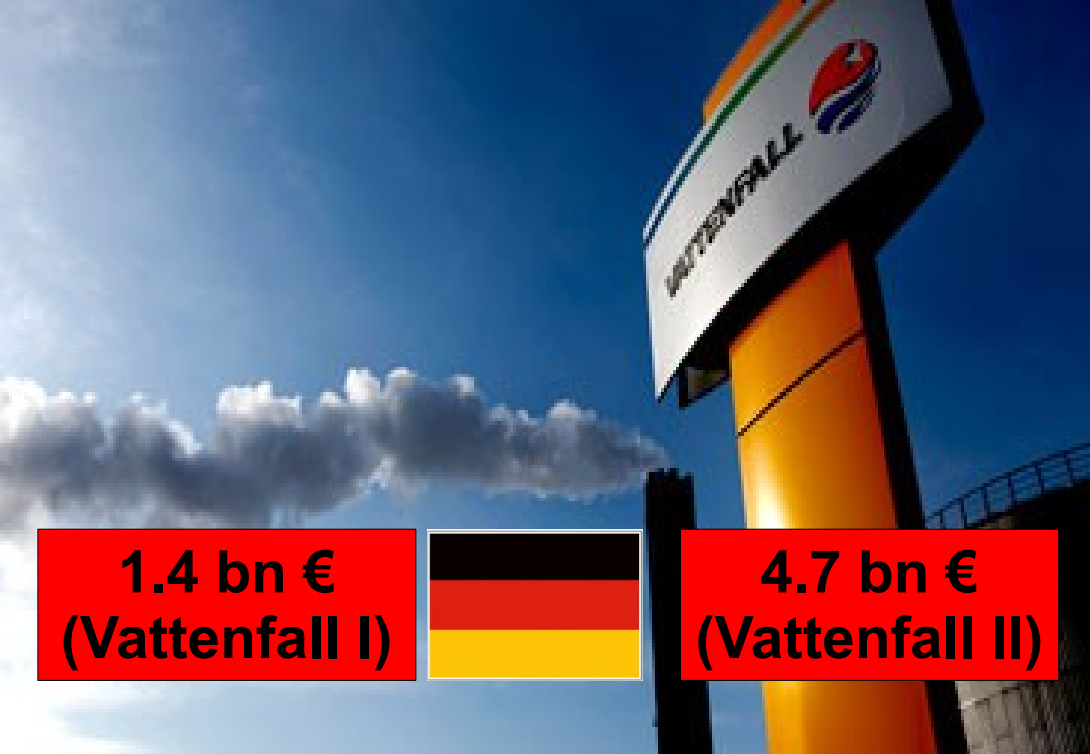
Source: UNCTAD.

# ICSID cases registered in FY 2014, by economic sector



*Source: The ICSID caseload statistics (issue 2014-2)*

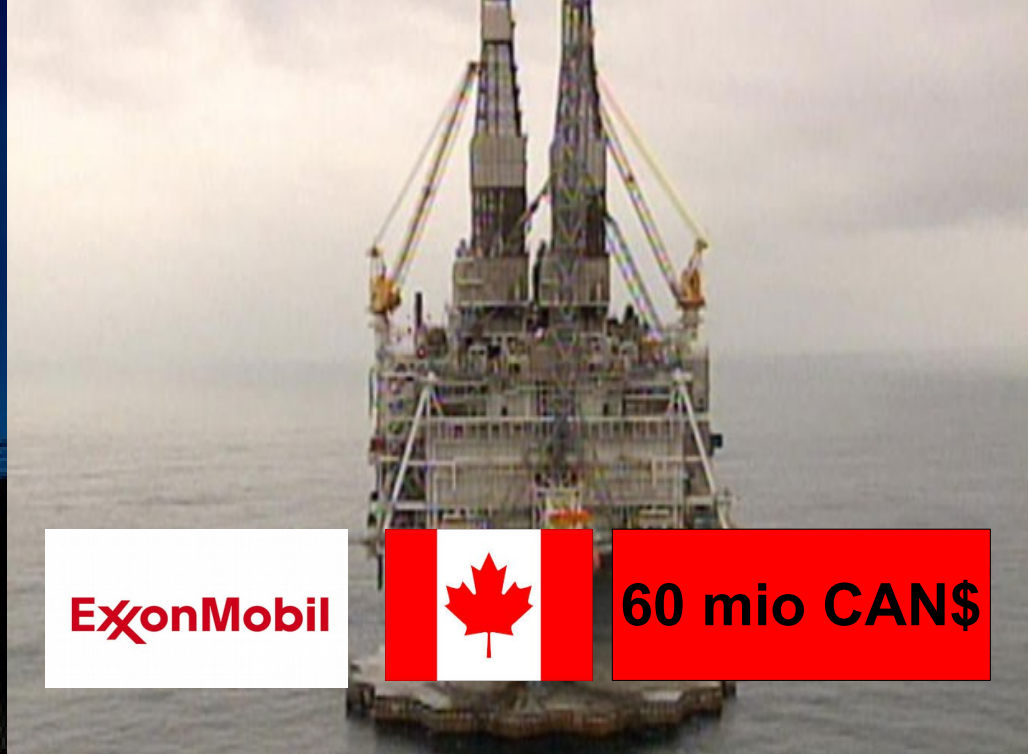




**1.4 bn €  
(Vattenfall I)**



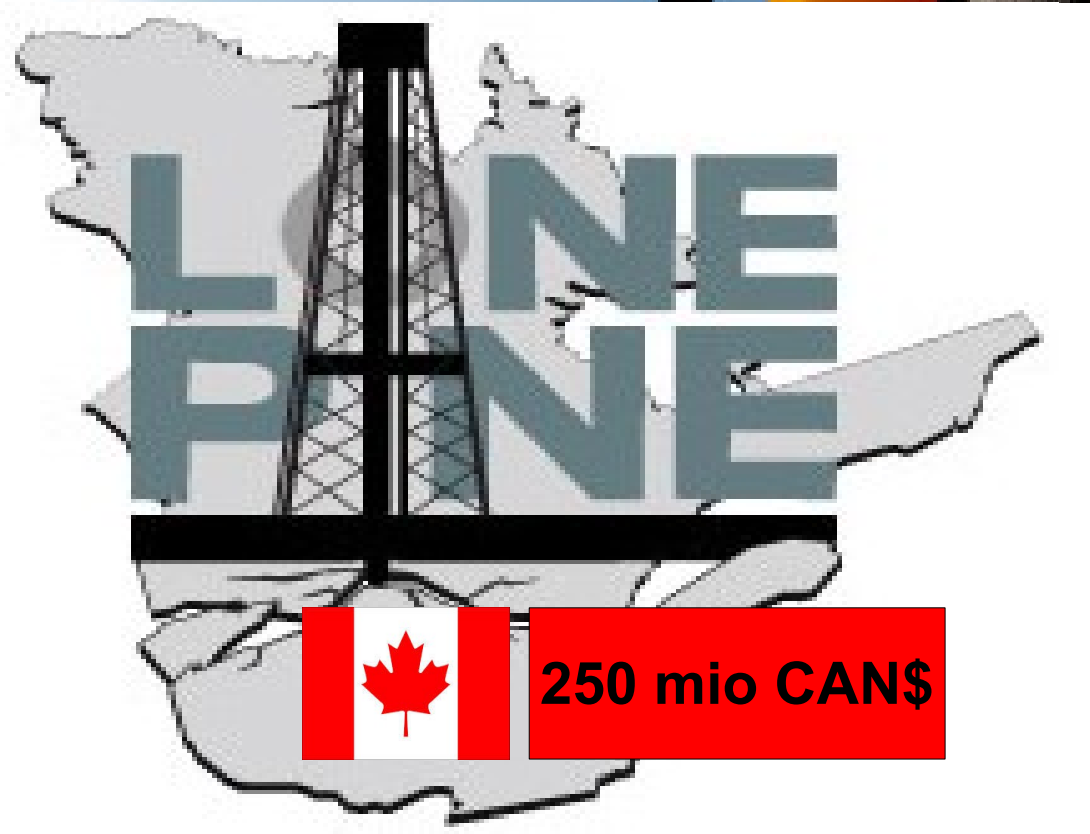
**4.7 bn €  
(Vattenfall II)**



**ExxonMobil**



**60 mio CAN\$**



**250 mio CAN\$**



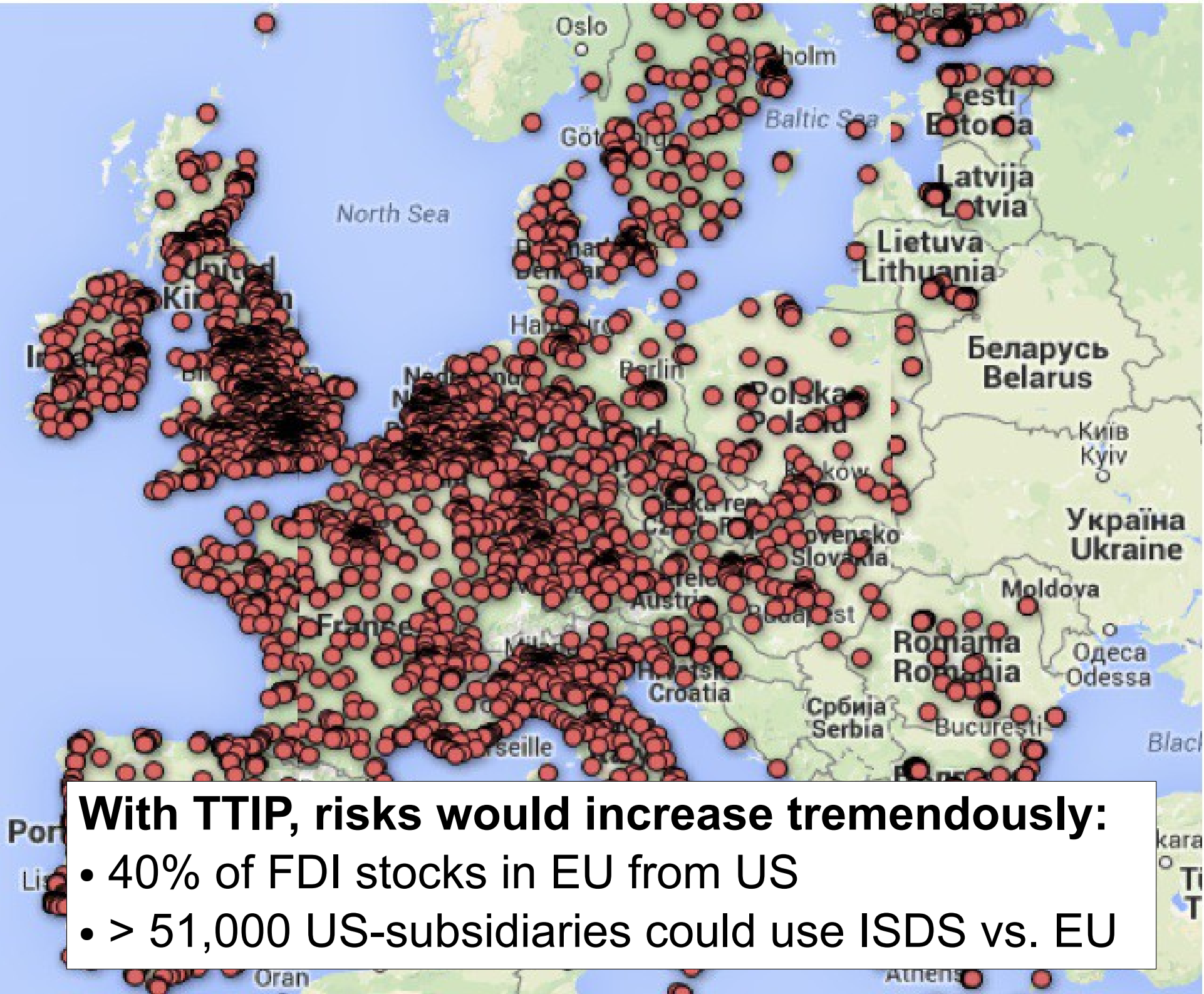
**133 mio US\$**



# What c/would happen if ISDS was included in TTIP?

- **Claims** against: environmental regulations (Vattenfall I), price controls (CMS), fundamental policy decisions (Lone Pine, Vattenfall II) & other changes in energy sector
- Multi-billion **awards** to compensate corporations, paid with taxpayer money (CMS, Mobil Investments)
- **Chilling effect** on energy policies, as a result of claims (Vattenfall I) and lawsuit threats (particularly when there is regulatory cooperation)
- **No economic benefits**





**With TTIP, risks would increase tremendously:**

- 40% of FDI stocks in EU from US
- > 51,000 US-subsidiaries could use ISDS vs. EU

# But doesn't the EC address the risks?

**Actually... no!**

<b>Will the EC approach to investment protection as seen in CETA...</b>	
... prevent claims against sound energy policies?	
... prevent expansive interpretations of the law by for-profit arbitrators with an incentive to grow their own business?	
... protect the EU and its member states against the risk of multi-billion Euros awards, including for sound energy policies?	
... prevent investors from threatening claims, which may lead to regulatory chill?	

# **(Instead of a) conclusion**

**Why would you as legislators...**

... hand investors such a powerful weapon to challenge decisions by parliaments, governments and courts, with potentially detrimental results for taxpayers?

... circumvent our sophisticated + balanced legal systems in favour of a parallel private system which lacks independence and equitable access to justice?