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Lessons from the Past

Country Specific Issues in Investment Arbitrations

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Outline

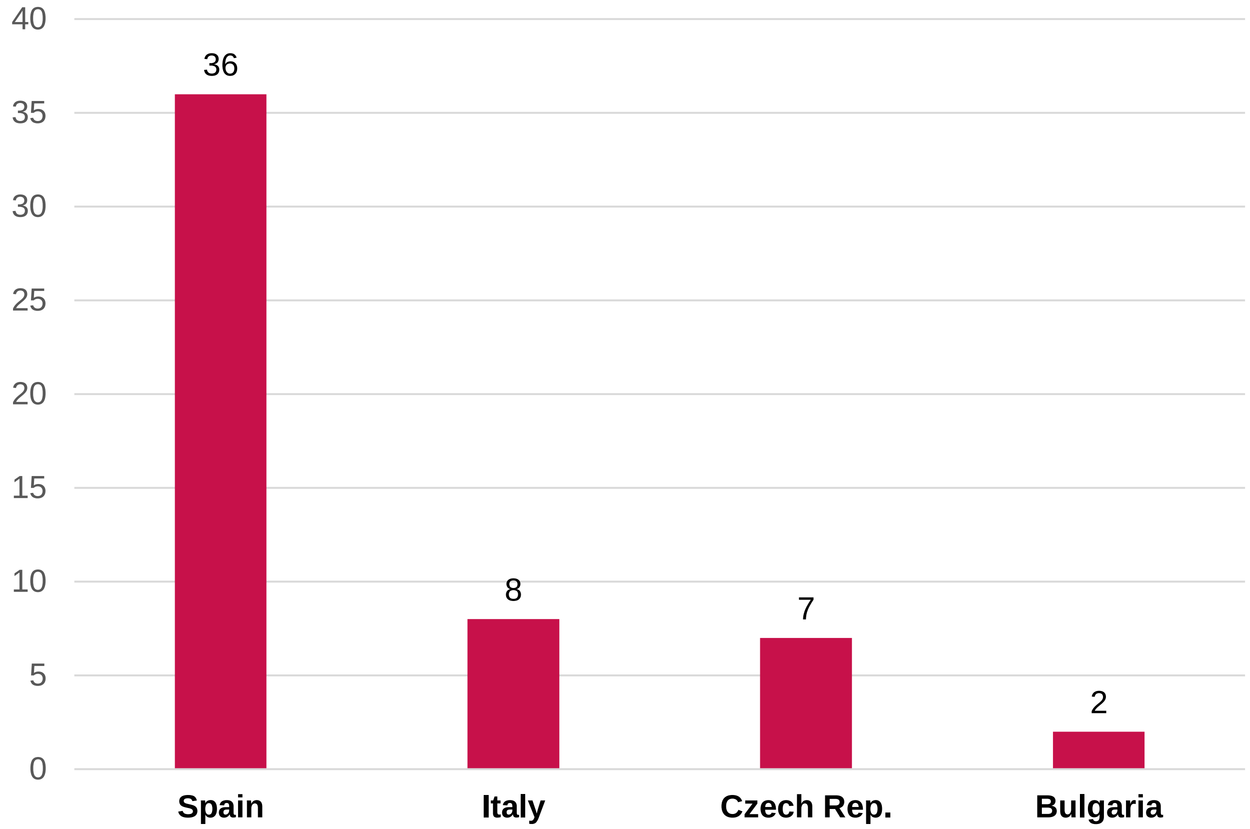
- **Background**
  - International Legal Framework for Energy Investments
  - Characteristics of Investments in Renewables

- **Case Studies**
  - Czech Republic
  - Spain
  - Germany

- **Conclusions**

Background

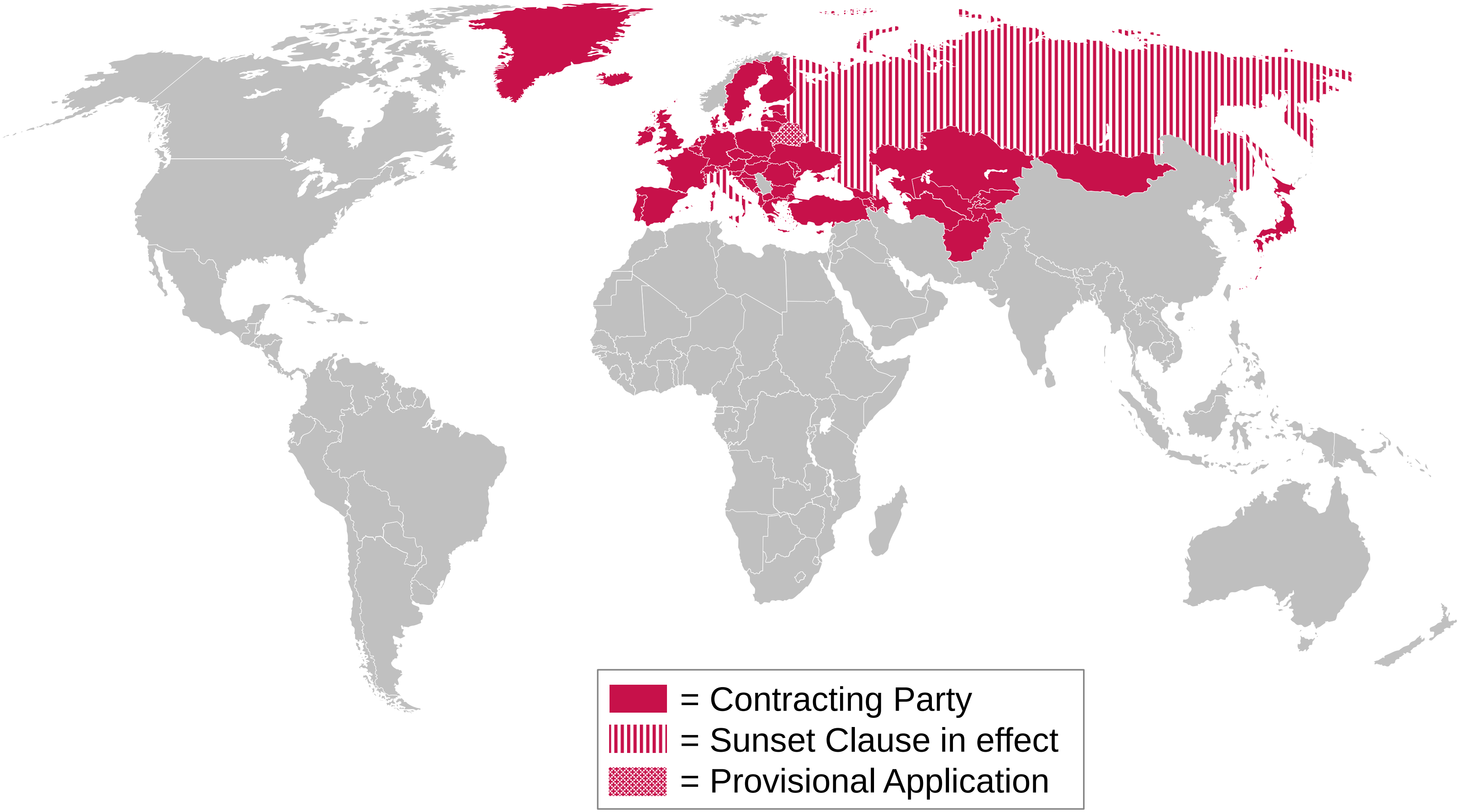
Known Investment Arbitrations concerning Renewables in Europe



- Total amount claimed against Spain: **EUR 7.6 billion**

Framework for Investments in the Energy Sector

Energy Charter Treaty



Stability

Energy Charter

- *In order to promote the international flow of investments, the signatories will at national level provide for a stable, transparent legal framework for foreign investments, in conformity with the relevant international laws and rules on investment and trade.*
- *They affirm that it is important for the signatory States to negotiate and ratify legally binding agreements on promotion and protection of investments which ensure a high level of legal security and enable the use of investment risk guarantee schemes.*

Article 2 ECT: Purpose of the Treaty

- *This Treaty establishes a legal framework in order to promote long-term cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter.*

Transparency

Article 20(2) ECT: Transparency

- *<u>Laws, regulations, judicial decisions and administrative rulings</u> of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which <u>affect</u> other <u>matters covered by this Treaty</u> shall also be <u>published promptly</u> in such a manner as to enable Contracting Parties and <u>Investors to become acquainted</u> with them. […]*

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Characteristics of Investments in Renewables

Characteristics of Investments in Renewables

Situation of the Investor:

- "Hostage" situation
- Long Investment Return Cycle
- Investments "front-loaded": high initial CAPEX, low OPEX
  - No or limited possibility to respond to regulatory changes once investment is made
- Income (used to be) dependent on Feed in Tariffs ("FiTs")

Consequence:

- ➢ Stability
- ➢ Transparency

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Case Study:
Czech Republic

Initial Regulatory Framework & Later Measures: From an Investor's Perspective

Law 180/2005

- Guarantee of a **15-year payback** period for the investment
- Guarantee that FiT will **remain unchanged** for at least 15 (later 20) years (apart from inflation adjustment)
  - "for the devices put into operation after the date of the effect of this Act, the amount of the revenues stays unchanged for the unit of the electricity from the renewable sources with the support of the buy-out prices for the period of time of 15 years since the year, when the device was put into operation as minimum amount whilst taking the price index of the industrial producers into consideration"
- FiTs for new plants put into operation must at least be 95% of the FiTs for plants put into operation in the previous year (**"5% brake rule"**)

-26%

new PV plants

only up to 30 kWp

X

Law 402/2010
(14 Dec 2010)

Law 330/2010
(3 Nov 2010)

Law 137/2010
(21 April 2010)

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Case Study:
Spain

Planning achievement of RES targets

EU Renewable Energy targets

↓

Renewable Energy Plan

setting technology-specify capacity targets

↓

Special Regime

providing incentives calculated to achieve capacity & EU targets

Managing achievement of RES targets

Registration necessary to obtain incentives

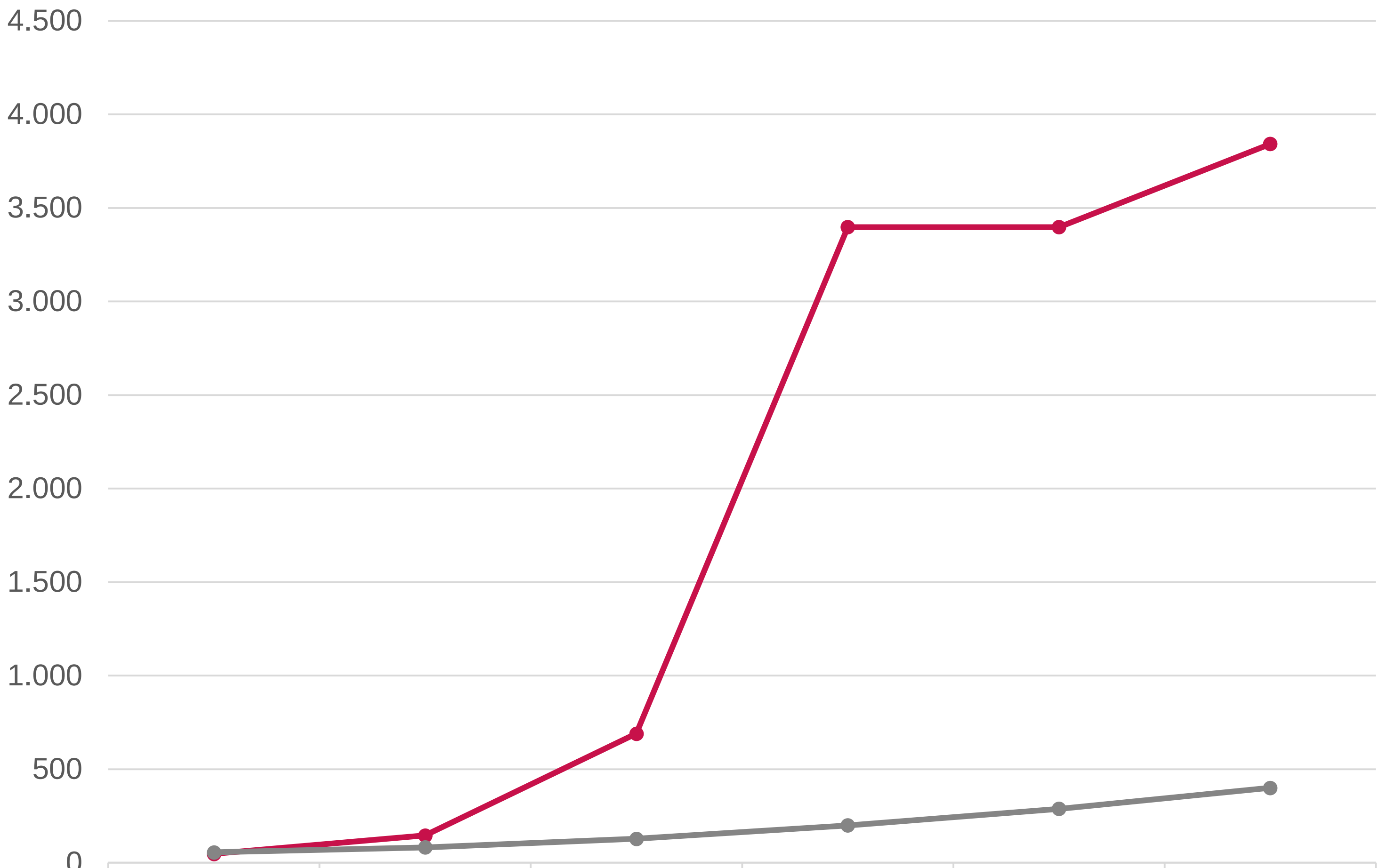
↓

85 % of technology-specific capacity target reached

↓

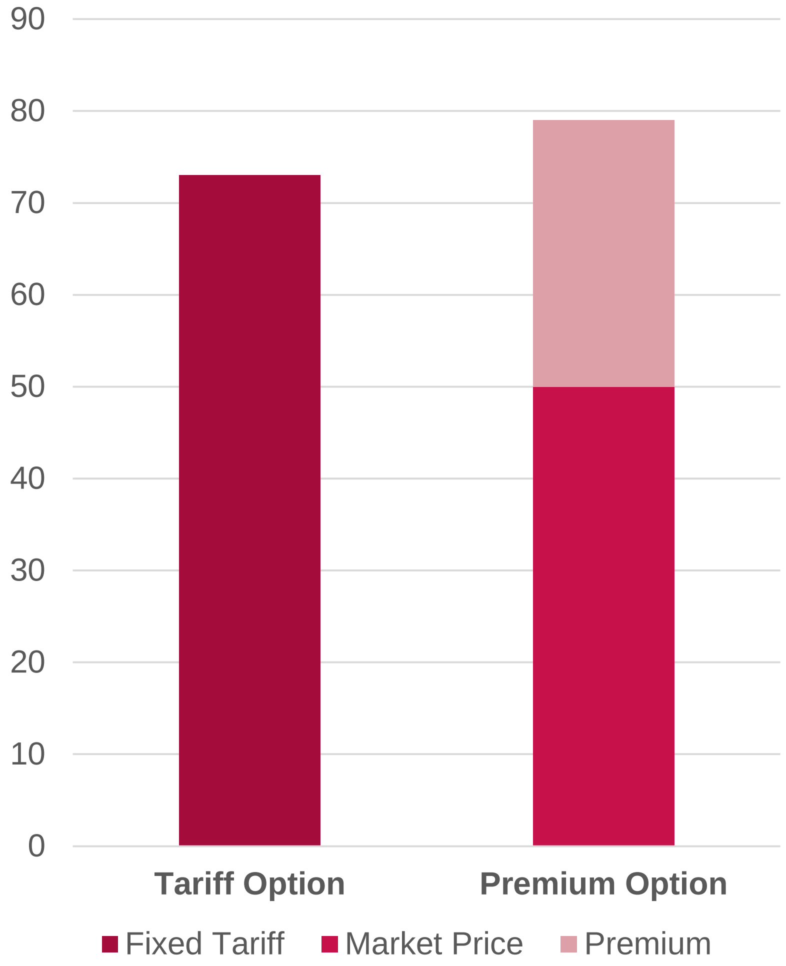
Notice setting at least **12-month period** until closure of registration

Installed PV Capacity: Actual v. Planned



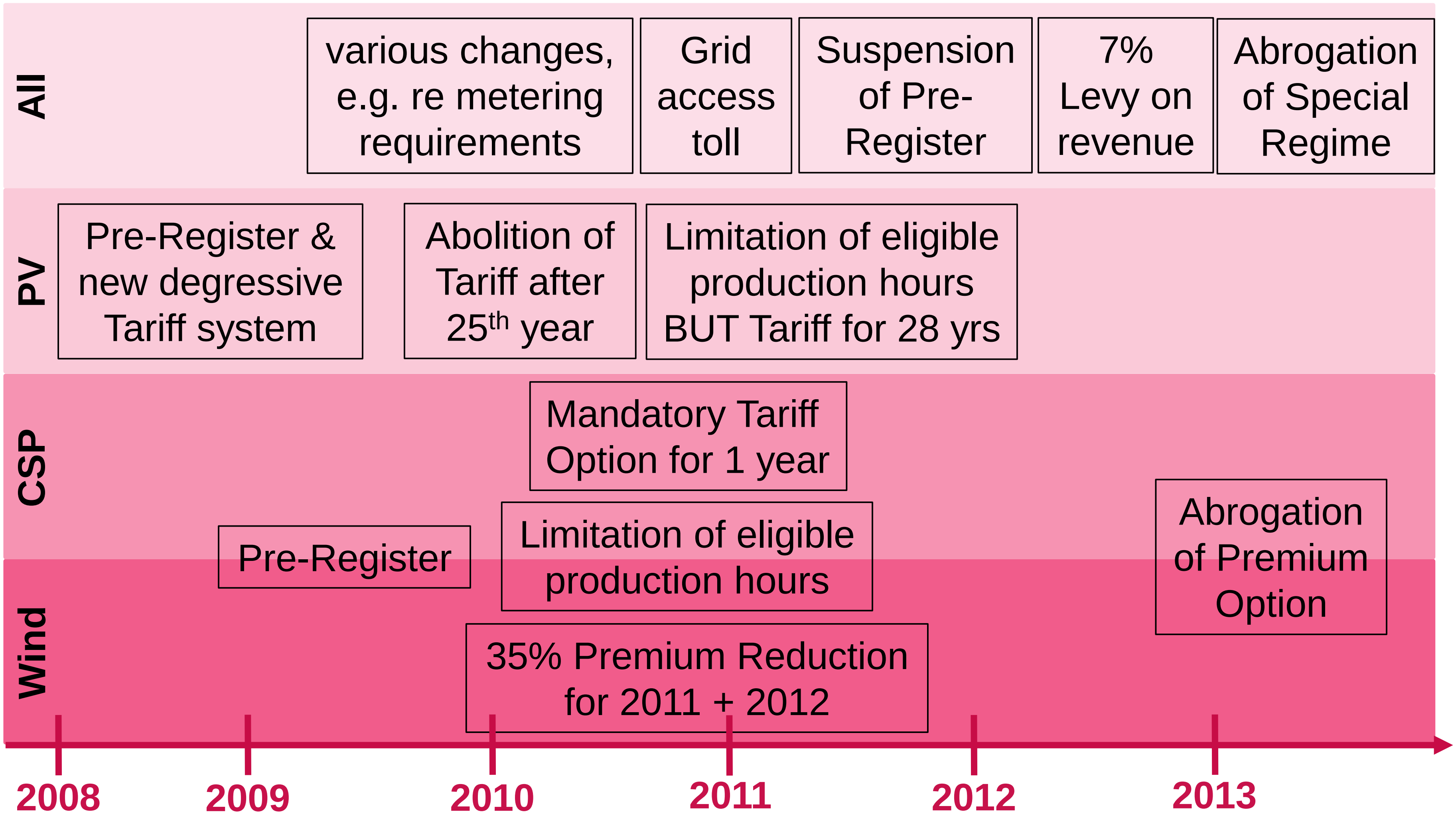
	2005	2006	2007	2008	2009	2010
Actual	47	146	690	3.398	3.398	3.842
Planned	56	82,5	128,5	200	288,5	400

Initial Regulatory Framework: From an Investor's Perspective



- Tariff/Premiums set out for <u>entire lifetime</u>
  - First 20 or 25 years: full Tariff/Premium
  - Thereafter: reduced Tariff/Premium
- Tariffs/Premiums inflation adjusted
- Change between two options possible every 12 months
- Premium Option with Cap and Floor
  - Floor protects investors
  - Cap reduces costs of Support Scheme
- Review of Incentives for every four years
  - Applies only to plants commissioned more than 1-2 years after revision was made

Measures Adopted: Non-Exhaustive Overview



Fundamental Change of Support Scheme

Special Regime (RD 661/2007)

- **Production**-based remuneration
  - for entire electricity fed into grid
- set for **entire lifetime**

New Regime (2013/2014)

- **Capacity**-based remuneration
  - **production**-based remuneration where market price insufficient to cover operating costs and limited to fixed amount of full load hours
- limited to **certain lifetime**
- limited to certain **rate of return** on a “standard” investment
- adjusted every 6 years according to return of Spanish state bonds – *also for existing plants*

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Case Study:
Germany

Degression Mechanism

- FiTs for new plants automatically reduced by “x” % compared to previous year

	Degression
EEG 2000	**5%**
EEG 2004	**6.5%** (from 2006 onwards)
EEG 2009	**10%** (from 2011 onwards: 9%) ▪ **+/- 1%** additionally **depending on installed capacity** in last year
August 2010	**11%** from 2011 onwards (effective as of 1 July 2012) ▪ <u>2010:</u> **+12-13% / +15-16%** if **commissioned after** 30 June 2010, respectively 30 Sept 2010 ▪ <u>2011 & 2012:</u> up to **+/- 4%** and **+/- 12%**, respectively, **depending on installed capacity**
EEG 2012	9% but **very 6 months**
August 2012	**1% per month** (effective as of 1 May 2012) ▪ adjustment depending on installed capacity

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Conclusions

Lessons from the Past

- Investment Arbitrations arose when States adopted measures impacting
  - **existing** investments
  - in a **substantial** manner

- Support Schemes should contain **clear and transparent review mechanisms** that
  - ensure <u>stability</u> for existing investments
  - provide <u>flexibility</u> for the State to adjust the remuneration for future plants in order to react to (technological) developments BUT
    - Investments in development to be taken into account
    - Criteria/review intervals to be specify to permit investors to plan

- Planning and managing of installed capacity

Thank you

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Q&A

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