



FIVE YEARS OF EMERGENCY PROCEEDINGS UNDER THE SCC RULES

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- I. Essential facts of Emergency Arbitration under the SCC Rules
- II. Timeline of an Emergency Proceeding
- III. Reasoning by the Emergency Arbitrators
- IV. Statistics



ESSENTIAL FACTS

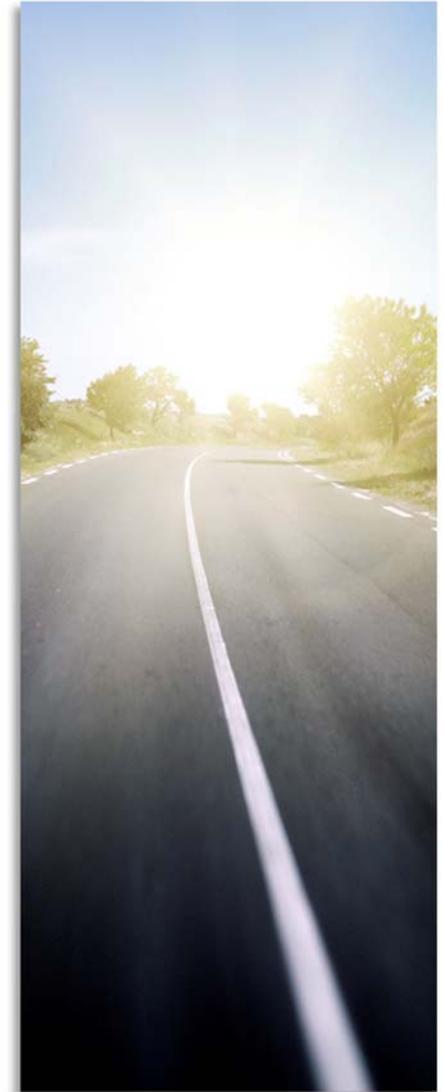
Emergency Arbitration under the SCC Rules

- In force since 1 January 2010
- “Opt out” mechanism
- Application can be made until the case has been referred to an arbitral tribunal
- No possibility of *ex parte* decision



Emergency Arbitration under the SCC Rules

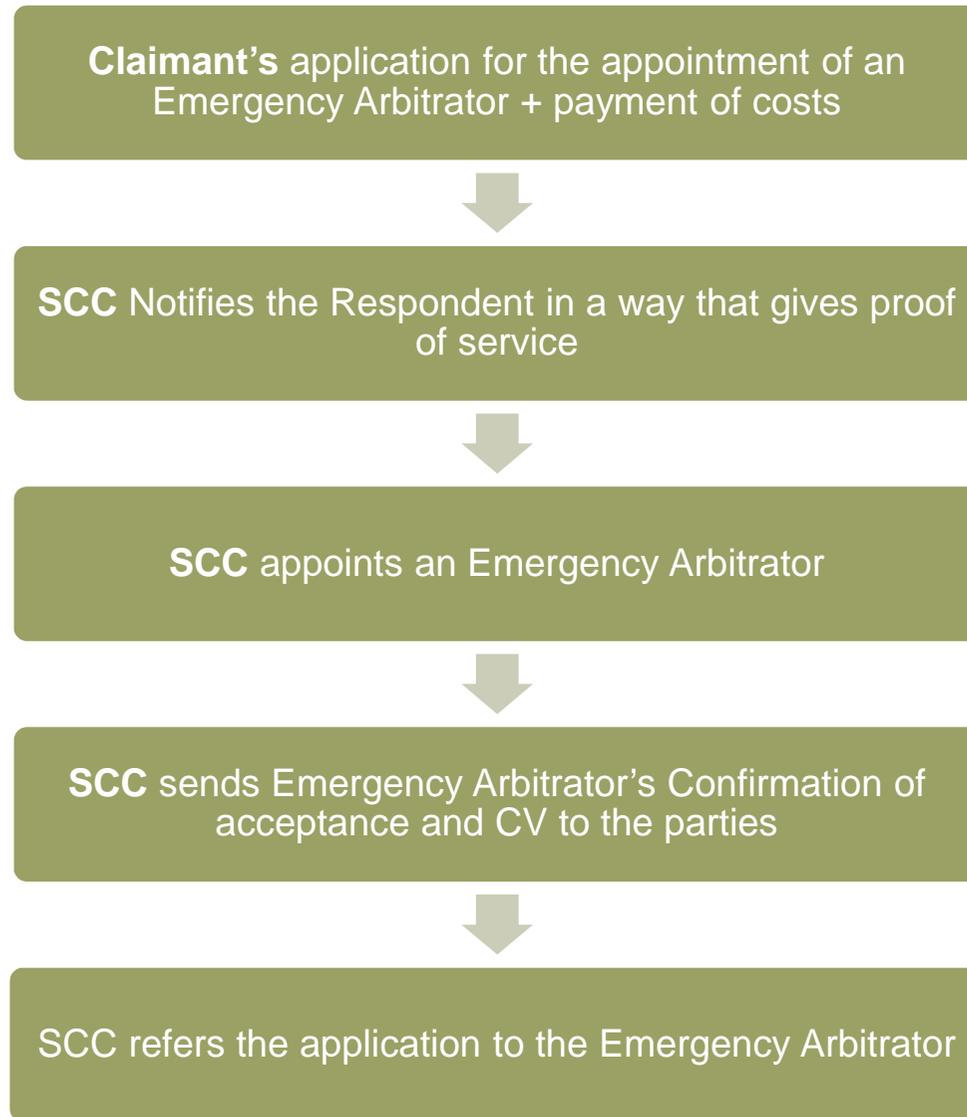
- Appointment within 24 hours
- Decision/award within 5 days after referral
- Cost: € 15 000, paid by Claimant
 - May be apportioned between the parties in a final award





TIMELINE

Timeline: Initiation of Emergency Proceedings



Timeline: SCC EA 2014/138

- Application was complete on a Monday at 13:05
- The SCC confirmed receipt of the application at 13:25
- Application was sent to Respondent and Respondent's counsel
- Appointment at 10:40 on Tuesday
- Referral at 10:50 on Tuesday



Timeline: Emergency Proceedings



Timeline: SCC EA 2014/138

- Initial contact made on Tuesday afternoon (day 0)
- Respondent's reply submitted on Wednesday evening (day 1)
- Claimant's comments submitted on Thursday at noon (day 2)
- Final remarks by Respondent on Wednesday evening (day 2)
- Emergency Decision on Sunday (day 5)





REASONING BY THE EMERGENCY ARBITRATORS

VINGE

Powers of the Emergency Arbitrator

- **Article 32 (1)-(3)**

(1) The Arbitral Tribunal may, at the request of a party, grant **any interim measures it deems appropriate**.

(2) The Arbitral Tribunal may order the party requesting an interim measure to provide appropriate security in connection with the measure.

(3) An interim measure shall take the form of an **order or an award**.

SCC Practice: Prerequisites for granting a request

1. *Prima facie* jurisdiction
2. Claimant has established a reasonable possibility to succeed on the merits of its claim, *prima facie*
3. Claimant has established urgency
4. Claimant has established risk or irreparable harm
5. The request must be necessary and appropriate



SCC Practice: Reasons for rejecting request

1. Rejection due to (separately or combined):
 1. lack of urgency 8 cases
 2. lack of imminent harm 7 cases
 3. No jurisdiction to bind third party 2 cases
2. *Prima facie* claim on merits in 5 of 10 unsuccessful cases
3. Undertakings from Respondents in two “unsuccessful” applications

Example: SCC EA 2014/138

Claimant requested:

- **interim declaration** that Claimant had the right to postpone the completion of the construction by a certain, fixed number of days and thereby amend the parties' contract that the work should be completed on a later date than previously agreed.

Example: SCC EA 2014/138

Emergency Arbitrator's reasoning:

1. The Emergency Arbitrator found that it had jurisdiction over the application.
2. The Claimant had established, *prima facie*, that it had a reasonable possibility to succeed on the merits.

Example: SCC EA 2014/138

Emergency Arbitrator's reasoning:

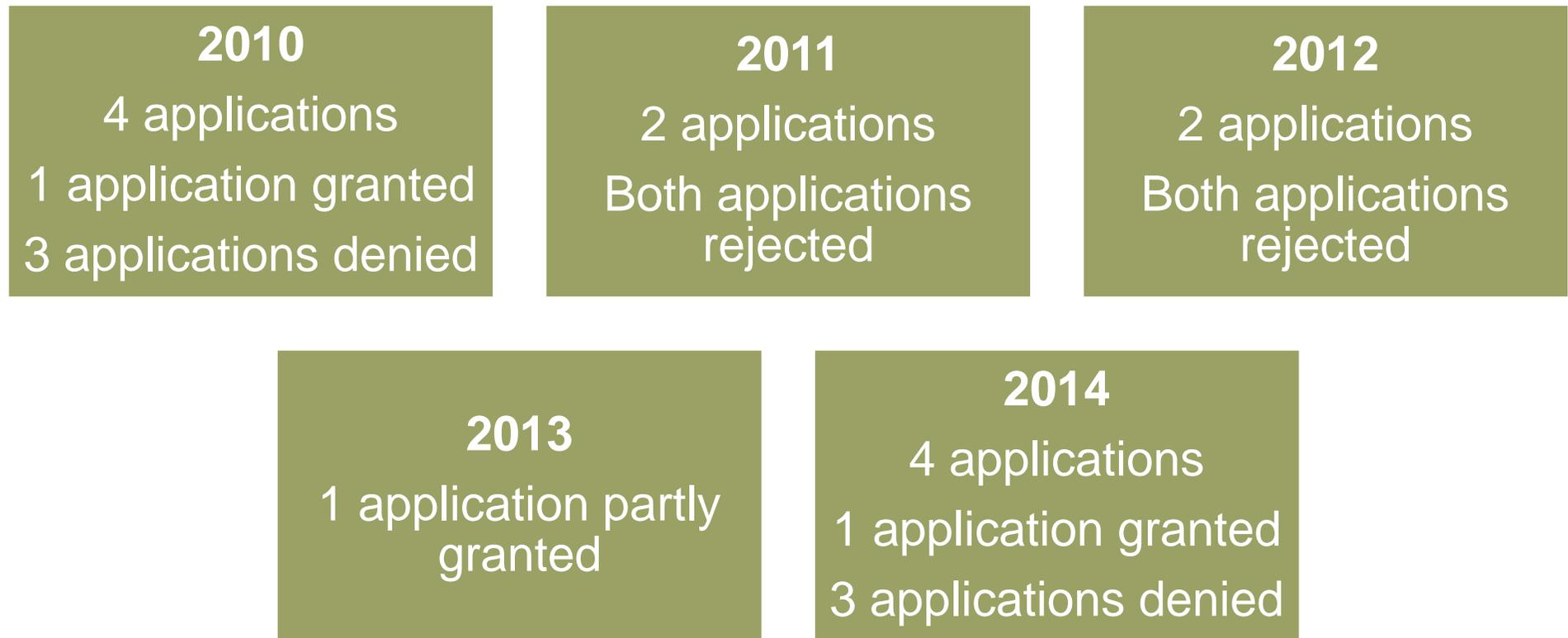
3. Even though Claimant suffered from the uncertainties arising from the dispute, neither of the necessary prerequisites were fulfilled.
 - No urgency
 - No imminent harm
 - No risk of sabotage
 - Respondent had not acted in a disloyal manner
4. Even if the necessary prerequisites had been fulfilled, the requested measure would **not be suitable** to grant as an interim measure, considering the nature of the parties' contractual relationship.



STATISTICS

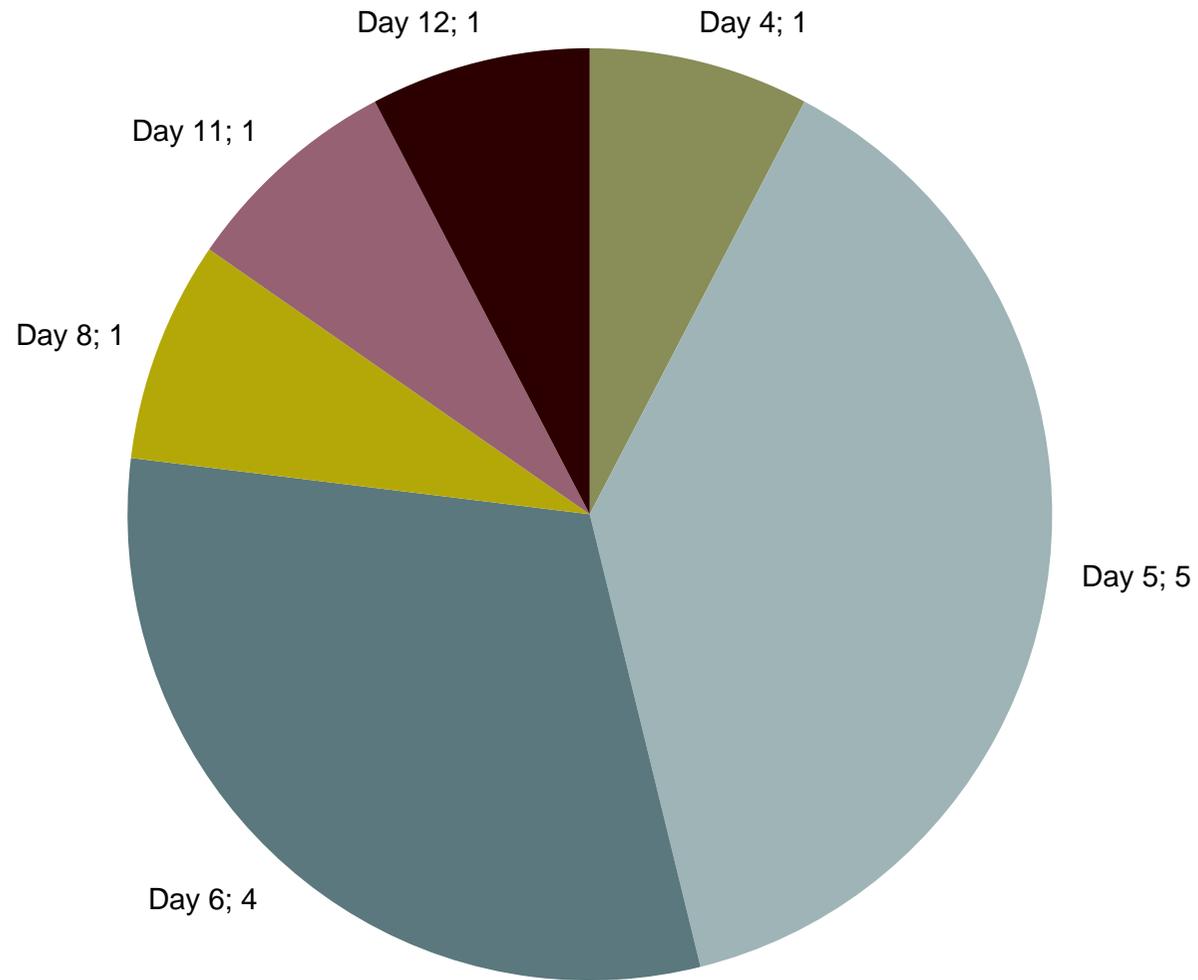
Statistics

- 2010 - 2014: 13 requests

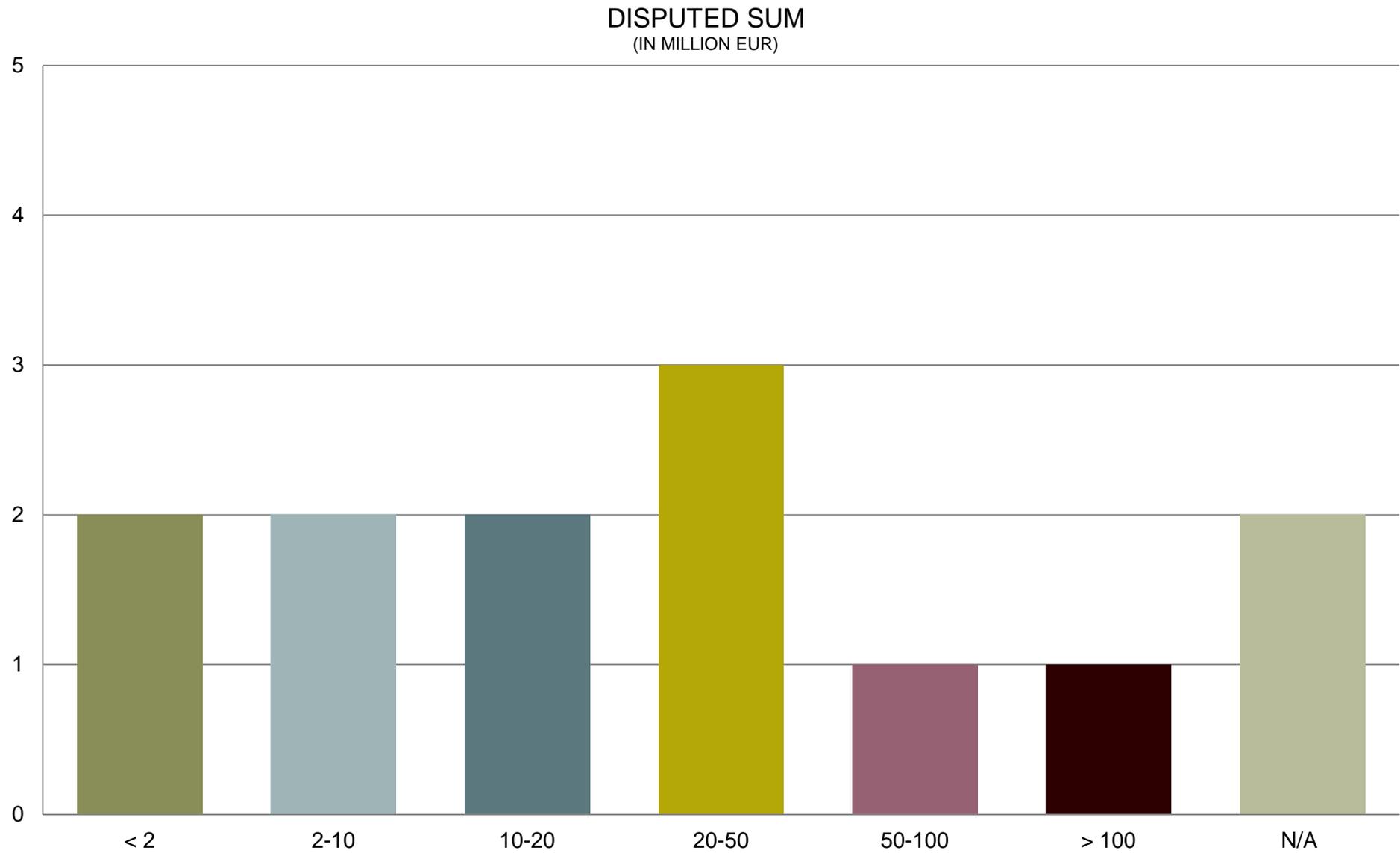


Day of rendering Emergency Decision

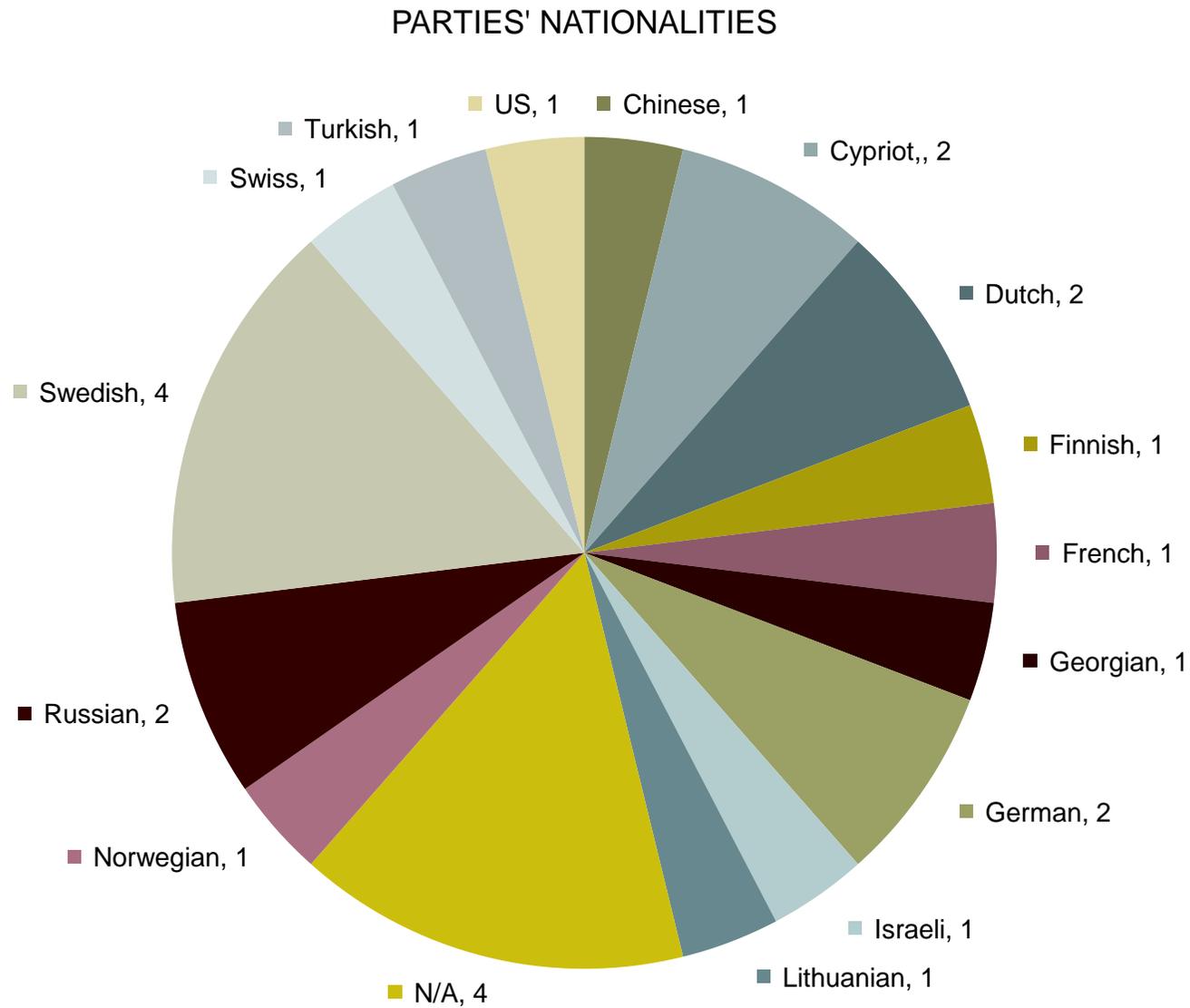
EMERGENCY DECISION RENDERED ON DAY



Disputed sum



Nationalities



VINGE