

# Warm Welcome

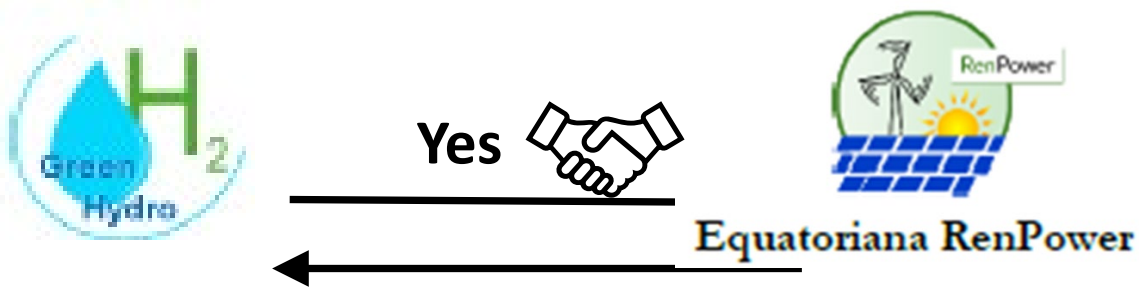


# Legal Preparation?

- 1. Who thinks that the arbitral tribunal has jurisdiction?**
- 2. Who thinks that the CISG is the applicable law?**
- 3. Who thinks that the contract has been validly terminated?**
- 4. What does that mean for Green Hydro?**
- 5. And Equatoriana RenPower asks you as their lawyer: What do you suggest: Engage with other possible partners? But we have a limited budget.**

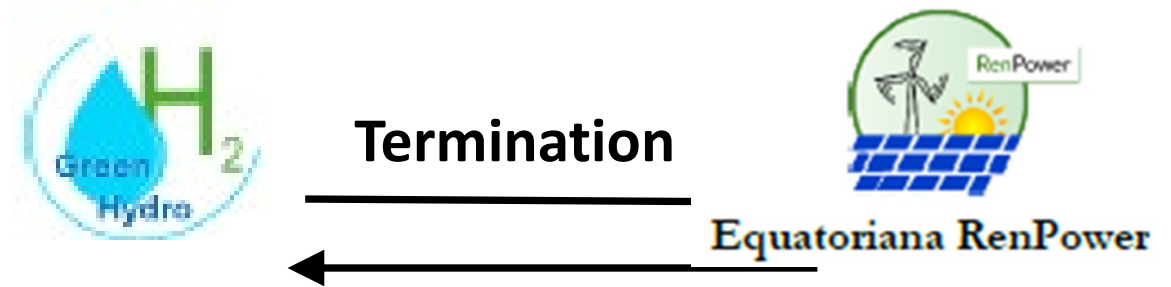
# Underlying problem of the dispute

17. July 2023



- ☐ Plant at a price of 285 Mio €
- ☐ Best efforts to ensure success
- ☐ Right of termination for convenience was excluded
- ☐ Operating data, originally owned by Respondent (Art. 27)

29. February 2024



- ☐ Change in energy strategy acc. New minister
- ☐ Entitlement of termination
  - ☐ Under 50% of materials and services from Equatorian
  - ☐ Failed to meet the first milestone.
  - ☐ criminal investigations against Mr. Deimann

# Parties involved



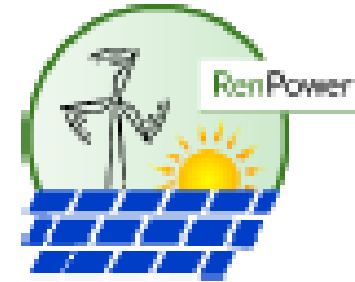
**Ms Teresa Vent**  
Equat. Nat. Party



**CEO Paul  
Cavendish**



**Mr. August Deiman**  
form. Head of contracting



**Equatoriana RenPower**



**Ms M. Faraday**  
former CEO



**Mr. H. la Cour**  
new CEO



**Mr. Law**  
form. & new head of legal. dep.



**Ms Heidi Smith**



**Lawyer Josef  
Langweiler**



**Lawyer Julia  
Fasttrack**



**Ms. Johanna Ritter**  
Head of contracting

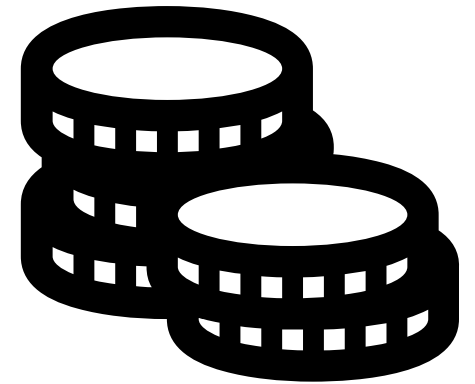
# Request for relief by Claimant (Green Hydro)

## REQUEST

34. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:

- 1) Declare that the Agreement is governed by the CISG.
- 2) Declare that the Agreement has not been validly terminated by Equatoriana RenPower.
- 3) Order Equatoriana RenPower to fulfill the Agreement by using its best effort to have the necessary construction and operation permits issued and allowing Claimant to start with the construction works on the Greenfield site, as well as taking all further steps agreed upon under the Purchase and Service Agreement and necessary to ensure the realization of the project, including but not limited to making the relevant payments.
- 4) Order Equatoriana RenPower to bear the costs of the arbitration.
- 5) To make any other order the Arbitral Tribunal considers appropriate.

Economic value of the claim  
/cost of arbitration



# Economic value of the claim?

	<u>Mio €</u>
▪ Value of the plant?	300,0
▪ Price of the plant after negotiation?	285,0
▪ Work to be done by Equatoriana RenPower (say 1 Mio €) plus outstanding payments (from 285 Mio € - 10% already paid)?	257,5
▪ Payments and work from Equatoriana RenPower minus Green Hydro's remaining obligations (say still 95% of the work)	257,5
	<u>-285,0</u>
	-27,5
▪ Estimated monetary value of the claim by Green Hydro? (see paragraph 32 of the Request for Arbitration)	100,0

# Economic question:

- How can we get the 100 Mio € in question?
- What is **the best method** to solve this dispute?
- What are available **dispute resolution mechanisms**?
- What do you have **to prepare** in any case?

# Preparing the economic side of the dispute


1. **Underlying problem** of the dispute?
2. **Tool of the IMI** to analyse the case
3. **Economic background and implications** of the dispute
4. **Costs** associated with dispute/legal case

# TOOLS - IMI Olé Case Analysis and Evaluation Tool

can be downloaded here:  
<https://imimmediation.org/resources/online/dispute-analysis-tool/>

## Content (not necessary to fill in all):


1. Basic Facts of the Dispute
2. Case Analysis
3. Strategy Analysis
4. Financial Loss Analysis
5. SWOT Analysis
6. BATNAs, WATNAs and PATNAs
7. Way Forward Options
8. Future Strategy Summary
9. Ongoing Review
10. Performance Measurement



International Mediation Institute

## Olé! Online Dispute Analysis Tool

Funded by:



GE Foundation

Olé is an online process to help you to analyze and assess specific disputes in order to determine the best possible way forward – potentially reducing uncertainty, cost and time. Olé is a tool designed and developed by disputants for their use and by their legal counsel and this online functionality was funded by the GE Foundation.

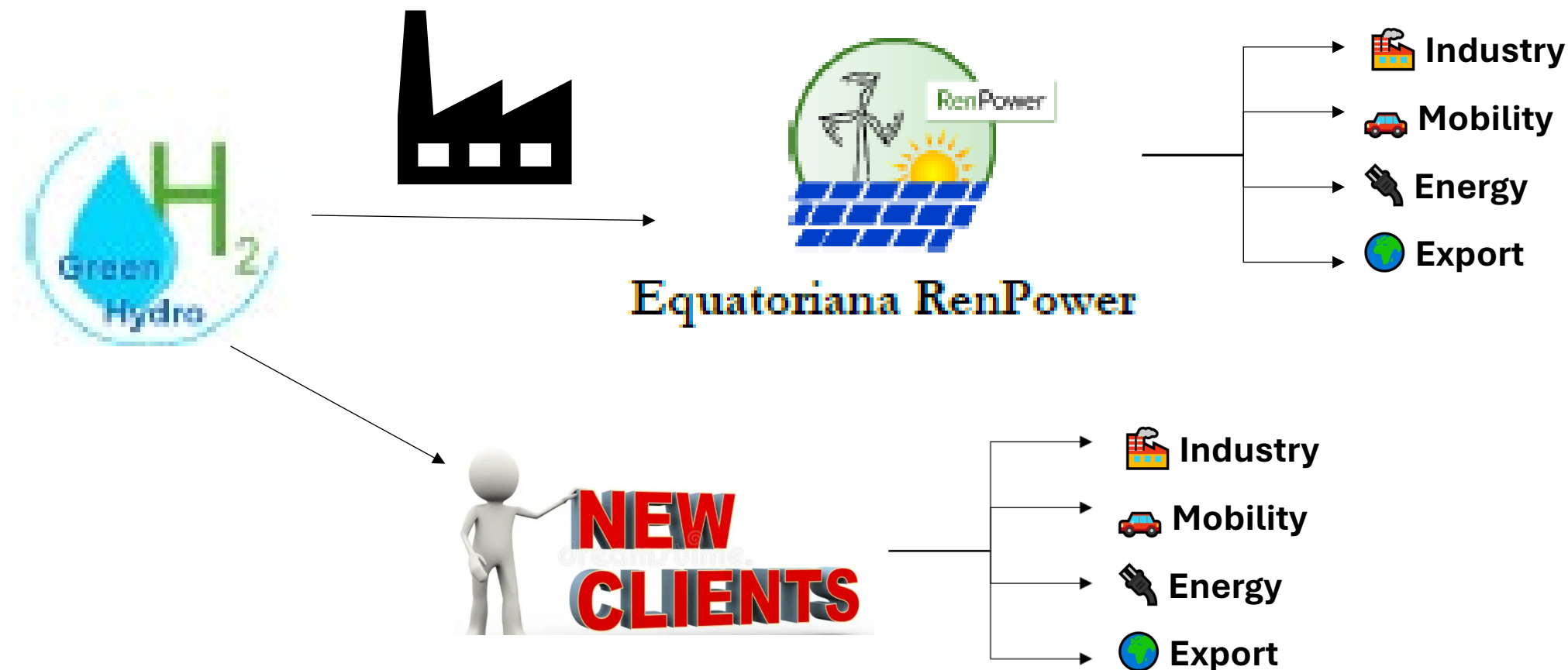
- Olé can be used by a disputant and legal counsel online (via screen-sharing).
- Olé is simple to use.
- Olé prompts the right questions and encourages concise answers.

[Olé! Case Evaluation Tool Word Version](#)

[Olé! Case Evaluation Tool](#)

10  
5

### 3. Economic backgroud and implications of the dispute



### 3. Calculation of the contract

	1. Calculation	
Sales p.a.	300.000.000	
Production costs	186.000.000	62%
Personnel expenses	60.000.000	20%
Other expenses	54.000.000	18%
Profit	0	0%

2. Calculation	
285.000.000	
186.000.000	65%
60.000.000	21%
54.000.000	19%
-15.000.000	-5%

### 3. Calucation - What might be the idea behind?

	Sales	Profit	
	in T€	in T€	in %
1. Project	300.000	-15.000	-5,0%

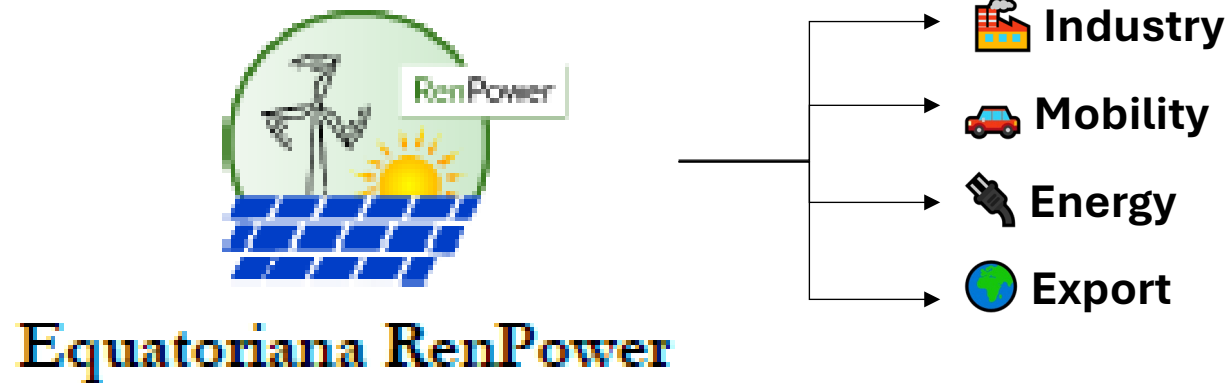
### 3. Reality testing – p/l effect of contract prices

	Ausgangslage									
Green Hydro	2023		2024		2025		2026		2027	
medium sized	€		€		€		€		€	
Sales p.a.	250.000.000		350.000.000		400.000.000		450.000.000		450.000.000	
Production costs	137.500.000	55%	203.000.000	58%	234.000.000	59%	247.500.000	55%	247.500.000	55%
Personnel expenses	50.000.000	20%	70.000.000	20%	80.000.000	20%	80.000.000	20%	80.000.000	20%
Other expenses	45.000.000	18%	63.000.000	18%	72.000.000	18%	72.000.000	18%	72.000.000	18%
Profit	17.500.000	7%	14.000.000	4%	14.000.000	4%	50.500.000	11%	50.500.000	11%
additional provision for onerous contracts			-15.000.000		0%	-42.750.000				
			-1.000.000			-28.750.000				



What is your red line??

### 3. Equatoriana RenPower



#### Interests:

- To develop local industry (if possible in new technologies)
- To decarbonize energy production in the transport sector and in industrial production
- To guarantee local industry with a competitive energy price (to gas and oil)
- Only to invest as state if there is no other chance

## 4. What are the legal costs? External AND Internal Costs

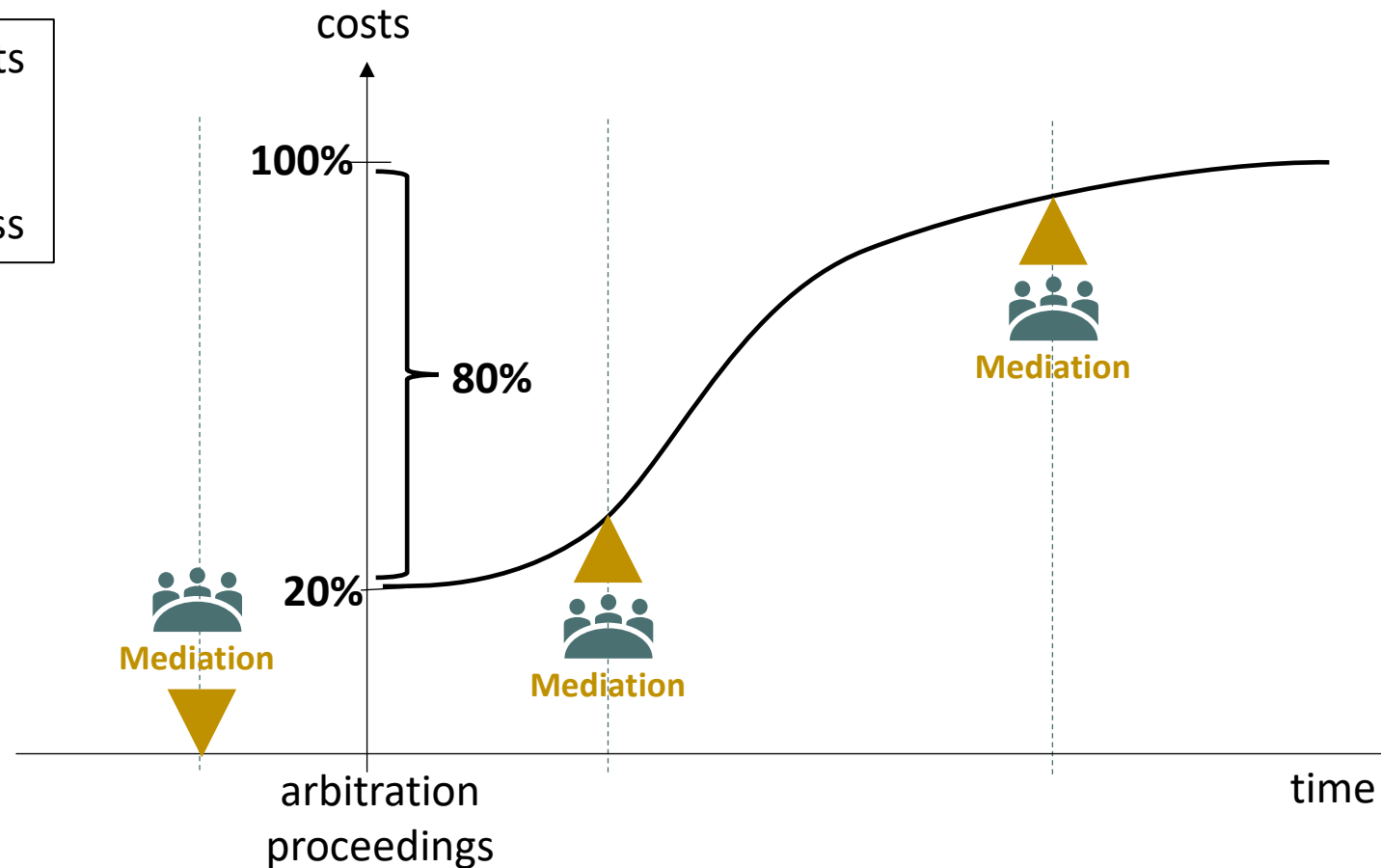
Calculation of legal costs		<i>Amount in dispute: 100 Mio €</i>	
	Lost cost	<b>Mediation</b> 1 Mediator average cost related to hours -> 40 h in T €	<b>Arbitration</b> 3 Arbitrators average cost ( min + max fee/2) in T €
<b>External costs</b>			
- Neutrals (arbitrators, mediators)		<b>32</b>	<b>584</b>
- Institution		<b>1</b>	<b>91</b>
- Lawyers representing parties			
assumed: 2 weeks 10 hours * 2 lawyers * 800 € *2 parties		<b>320</b>	
assumed (ICC): Lawyer cost / costs of tribunal+admin app. = 4:1			<b>2.700</b>
		<b>353</b>	<b>3.375</b>
		<i>costs usually are divided</i>	<i>costs follow the event</i>

### Don' t forget:

- Time consuming for employees to prepare the case (and their salaries)
- Time and costs of management board to join the hearings
- **Unsecurity** (financially, concerning necessary resource planning)
- **Disruption of work processes (backwards orientation)**

# POSSIBLE CONSIDERATIONS – CHANGE OF METHOD

Occurrence of costs  
in relating to the  
duration of an  
arbitration process



# NEW DEVELOPMENTS— CHANGE OF METHOD

