

## Judgment by the European Court of Justice delivers significant blow to Energy Charter Treaty



**(13 December 2021 - Update) The negotiations to reform the Energy Charter Treaty are failing as a [recent analysis of Investigate Europe shows](#) . It is time for the EU to pull out of the Treaty to prevent it remains tied to investor state dispute settlement provisions which will prevent it from taking the steps needed to achieve the Paris Agreement on limiting global warming.**

(7 September 2021) A case by the Ukrainian electricity company Komstroy against Moldova brought about a decisive victory for campaigners against the Energy Charter Treaty (ECT) such as EPSU.

The ECJ held that the “preservation of the autonomy and of the particular nature of EU law” must not be jeopardised by the ECT’s “arbitral mechanisms.” This means that the ECT will not be applied for intra-EU disputes anymore. With over 80% of investments until now covered by the ECT being within the EU, one can hardly overestimate the significance of this ruling.

The Treaty has come under increasing criticism, including by EPSU, as a multitude of lawsuits over state’s phaseout of fossil fuels are seriously endangering and delaying climate actions. There has also been increasing pressure by governments to withdraw from the ECT. Italy left the treaty in 2016, France and Spain pushed for a collective withdrawal.

EPSU is calling for a termination of the Treaty or a collective withdrawal from EU Member States from the Treaty. We have also called for a sunset clause that entails a collective and joint decision to stop the intra-EU application of the Treaty.

At least the latter point seems to have been achieved with the judgment.

With that being said, the decision still leaves signatory countries outside the EU within the remit of the treaty. It also leaves the question open whether companies with a seat outside the EU can still bring cases under the ECT.

We will continue our efforts to advocate for governments to leave the ECT once and for all and turn the treaty into a relic of the past that has no place in a green and just transition.

See the [EPSU policy briefing on the Energy Charter Treaty](#) from March 2021.

See also [the PSI’s in-depth report “Busting the myths around the Energy Charter Treaty”](#) From March 2021.

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