

Energy Charter Treaty reform: it's time to rewrite the rules

Energy Charter Treaty



(13 July 2022) 24 years on from its legal enforcement and 14 negotiation rounds, the little-known Energy Charter Treaty (ECT) is a representation of an outdated era of fossil fuel protection. The ECT provides a multilateral framework for energy cooperation between 50 member and observer countries. It has caused great concern among several labour unions and environmentalist organisations as it favours fossil fuel energy production, gives disproportionate power to companies to sue countries and does not favour foreign investments as intended.

While a reform of the ECT was agreed in principle on 24 June, the European Federation of Public Service Unions believes that these reforms are not and may never be adequate. The treaty is fundamentally flawed and poses a serious threat to Europe's Green New Deal and the Paris Climate Agreement. EPSU is therefore calling on member states to exit the treaty.

Jan Willem Goudriaan, General Secretary, says: *"The rules for the energy sector need to be rewritten. People and planet must come before profits. Public investment and ownership can lead the way towards climate justice for our communities and a just transition for all workers concerned. The treaty revision must reflect this."*

European Green Deal at risk

The ECT seriously undermines the Green New Deal and the Paris Climate Agreement objectives by supporting corporate giants through a mechanism of protection of investments called Investor State Dispute Settlement (ISDS). This mechanism allows companies to sue countries that have signed the treaty if their actions harm the companies' profits. The ISDS mechanism has become a serious hindrance for a publicly planned transition away from fossil fuels. In fact, [70% of lawsuit cases concerned oil, gas or coal](#).

- German company Uniper announced that it would sue the Netherlands and claim compensation if the country approves a law to phase out coal power.
- Since May 2017 UK-based [oil and gas company Rockhopper has been suing Italy](#) over the state's refusal to grant a concession for oil drilling. Rockhopper also claims a compensation for its potential future profits. This is possible even though Italy has already left the treaty, thanks to a 'sunset clause.'

As seen in these cases, the ECT puts public budgets and taxpayers' money at high risk. Private tribunals can force states to pay out billions to compensate investors, including for entirely hypothetical missed 'future profits'. Under the ECT, governments have already been [ordered or agreed to pay a total of more than US\\$51.6 billion in damages](#) from public budgets.

A conflictual treaty

While most of the disputes (68%) are between companies from the EU and EU countries, the ECT conflicted with EU law. In September 2021 the European Court of Justice ruled that the investor-state arbitration proceedings under the ECT were not compatible with EU Law.

Moreover, according to [OECD research](#), there is no evidence that the favourable protection of foreign investment

positively impacts countries that sign for it.

The modernisation process

260 civil society organisations and trade unions from Europe and worldwide, including Friends of the Earth Europe, Corporate Europe Observatory, [EPSU](#), and the Transnational Institute, have long called for profound reform or a complete withdrawal of the ECT. ISDS is not an acceptable mechanism in a time of urgent need for an energy transition away from fossil fuels. Members of the ECT have been negotiating the 'modernisation' of the treaty since December 2019.

On Friday, 27 June 2022, EU member states and the UK agreed that investments in new fossil fuel projects will no longer enjoy legal protection on their territories after 15 August 2023. For existing investments, legal protection will cease "after 10 years from the entry into force of the relevant provisions." In addition, five new energy materials and products have been introduced under the investment protection provisions. These are: hydrogen, biomass, biogas, Anhydrous Ammonia and synthetic fuels.

These provisions have generated outrage from environmentalist campaigners such as Paul de Clerck, Friends of the Earth who commented: *"The agreement is a disaster as it will lock the EU in fossil fuel investment protection for at least another decade and till 2040 for new gas infrastructure."*

On top of that, the ISDS clause is substantially not changing due to stiff opposition from countries like Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan. These countries export significant quantities of fossil fuels. Japan, which relies heavily on coal for energy production, has been one of the most reluctant to drop the dispute mechanism.

EPSU calls for exiting the ECT. The long-lasting modernisation process - which must be approved unanimously by all member states, many of whom are coal, oil and gas exporters - fails to adjust the treaty to the climate goals of the Green New Deal and Paris Agreement.

From citizens and unions to governments

The Netherlands Trade Union Confederation (FNV) has strongly opposed the ECT. In June 2021, FNV took its first 'ExitECT' action; an action repeated in July 2021. Together with other campaigners such as Friends of the Earth, they supported a petition that reached more than a million signatures from Europeans that ask to exit the ECT.

The Spanish government was the first to call for a withdrawal from the ECT as it does not meet the climate goals of the Paris Agreement and the objectives of the European Green Deal. Teresa Ribera, Deputy Prime Minister, Spain said: *"At a time when accelerating a clean energy transition has become more urgent than ever, it is time that the EU and its member states initiate a coordinated withdrawal from the ECT."*

The Dutch parliament passed a motion on Wednesday, 22 June that calls for the government to follow in Spain's tracks and withdraw the Netherlands from the ECT. *"Bad news for multinationals that want to undermine our climate policy with billions of dollars in claims,"* stated Party for the Animals MP Christine Teunissen in a [Tweet](#).

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