
The ECT: The outdated treaty holding climate-progressive governments to ransom

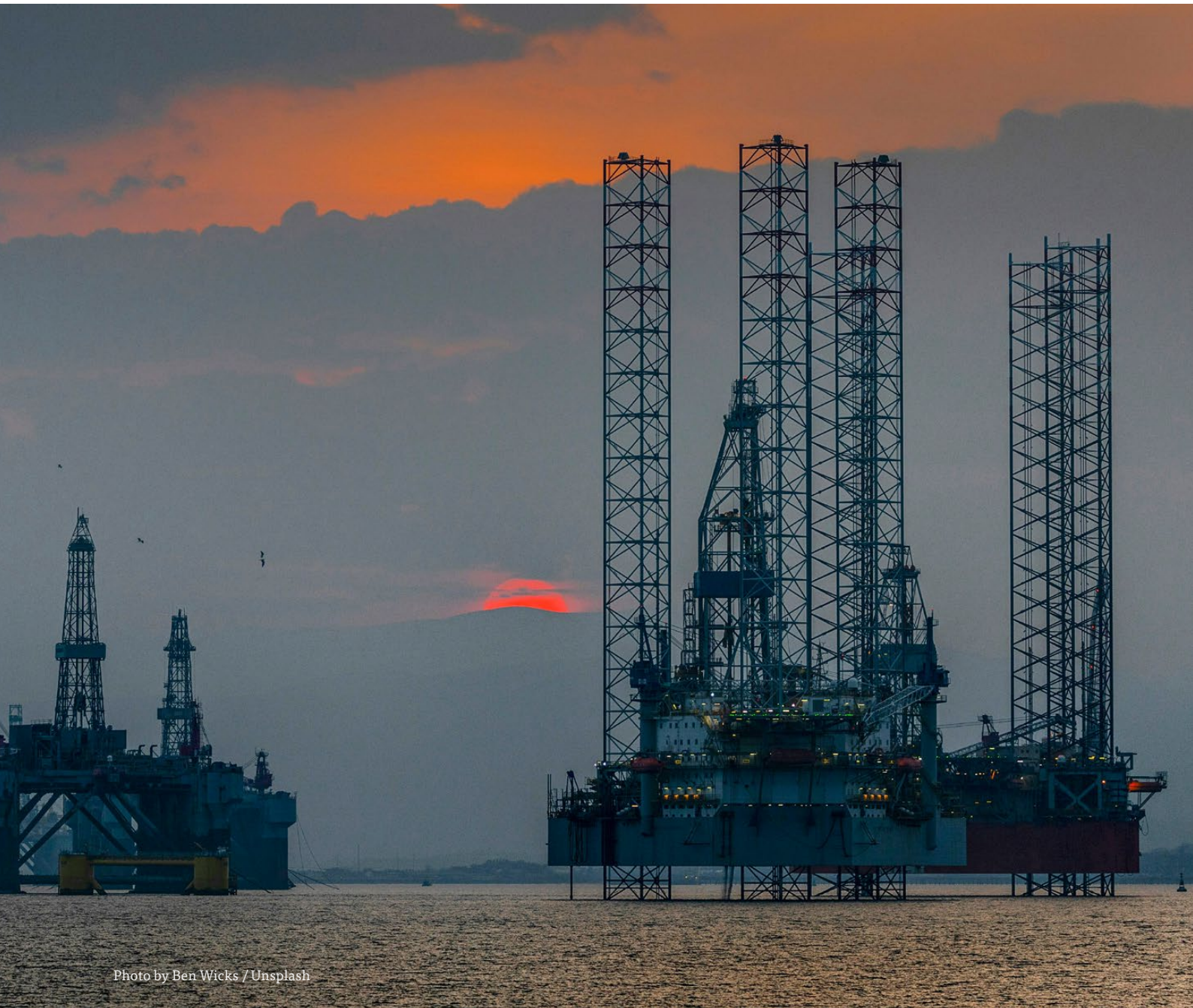


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What is the Energy Charter Treaty?

In 1994, the Energy Charter Treaty (ECT) established a legally binding framework for multilateral cooperation in the energy sector, protecting investments in activities such as oil extraction, coal mining, and petroleum refining. Introduced in the wake of the Cold War, the ECT was intended to protect Western firms investing in newly independent states, but its reach has since broadened – currently, it has over 50 signatories from across Asia, Europe, and the Middle East.¹ **Decades later, as the world grapples with the climate emergency, fossil fuel companies are using this archaic treaty to sue governments over policies that negatively impact their profits, undermining progress towards climate commitments and investments in renewable energy.**

Central to the ECT is a highly contentious investor-state dispute settlement (ISDS) mechanism which allows foreign energy firms to challenge climate policies that impact their operations – such as phasing out coal or bans on oil drilling – and claim compensation from governments for lost profits. ISDS cases are settled outside of national legal systems in ‘corporate courts’, where the parties involved select arbitrators themselves. The process lacks transparency, taking place behind closed doors and with no obligation to disclose outcomes.² One Guardian investigation revealed an apparent institutional bias towards fossil fuel interests – as of 2022, investors had won 64% of concluded ECT cases, three-quarters of which covered the fossil fuel sector.³

Financial claims under the ECT can reach billions of dollars, lining the pockets of fossil fuel investors with valuable taxpayer money that could otherwise be directed at the green transition. Fossil fuel companies have successfully sued governments for an average of US\$600 million per case.⁴ **Analysis conducted by Investigate Europe reveals that the ECT protects €344.6 billion of fossil fuel infrastructure in the EU, the UK and Switzerland.**⁵



Analysis by Investigate Europe reveals that the Energy Charter Treaty protects €344.6 billion of fossil fuel infrastructure in the EU, UK and Switzerland, with exposed UK assets making up over a third of this amount.

Cases brought against governments by fossil fuel companies

Rockhopper v. Italy: In 2022, UK-based oil company Rockhopper won its case against Italy over the government's ban on offshore drilling, and was awarded **€190 million**⁶ – reportedly more than six times what it had spent on the affected project.⁷ Rockhopper immediately announced that the pay-out would contribute towards a new oil field⁸ with the potential to exploit 1.7 billion barrels of oil.⁹

RWE v. the Netherlands: In 2020, German energy company RWE sued the Netherlands for **€1.4 billion** after the government announced plans to close all coal-fired power plants by 2030.¹⁰ In July 2023, an appeal ruling from the German Federal Court of Justice in Karlsruhe found RWE's claim to be inadmissible. While this had no direct impact on the case, RWE withdrew its claim against the Netherlands in November 2023.¹¹

Klesch v. the EU, Germany, and Denmark (ongoing): In 2023, leaked documents revealed that UK- and Switzerland-based oil firm, Klesch, intends to sue Germany and Denmark for **€95 million**, and the European Commission for an undisclosed sum, over windfall tax measures introduced in response to the energy crisis.¹²

Lansdowne v. Ireland (ongoing): In 2023, UK firm Lansdowne brought a case against the Irish government for its refusal to grant a licence for a planned oil and gas field, in which the company is a partner.¹³ While Lansdowne did not disclose the amount claimed, it is reported to be **€100 million**.¹⁴



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A barrier to climate action

By protecting fossil fuel interests, the ECT deters governments from implementing progressive climate policies and impedes meaningful action on the climate crisis – referred to as “**regulatory chill**” by the IPCC.¹⁵ Denmark and New Zealand have already admitted that the threat of litigation from fossil fuel companies hindered the ambition of their climate targets following COP26.¹⁶

The ECT also threatens to add a steep price on climate mitigation policies, making the transition to zero carbon more expensive for governments. **The continuation of the ISDS mechanism under the ECT until 2050 has been projected to cost €1.3 trillion globally.**¹⁷ The UK’s exposure is significant: in 2021, the UK was home to over £121 billion worth of fossil fuel infrastructure protected by the ECT – around £1800 per UK citizen, and making up over a third of the total exposed assets for the EU, UK, and Switzerland combined.^{18,19} By contrast, vast sums are to be saved by exiting; a coordinated withdrawal from the ECT is estimated to decrease the global cost of climate action by US\$5 - 20 billion.²⁰

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A coordinated withdrawal from the Energy Charter Treaty could decrease the global cost of climate action by up to US\$20 billion.



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No international investment agreement in the world has triggered more investor-state lawsuits than the ECT.²¹ Cases have exploded in recent years, with five times more claims filed between 2010 - 2019 than in the treaty's first decade.²² As opposed to when it was first established, when most lawsuits were aimed at countries in Central and Eastern Europe and East Asia, two-thirds of cases between 2013 and 2021 targeted countries in Western Europe, according to an analysis shared with the Guardian.²³ **As climate action increases, this trend will likely intensify as fossil fuel companies use the enormous power granted to them by the ECT to prevent the implementation of climate policies in some of our world's highest carbon-emitting countries.**

A treaty fast unravelling

Until recently, the UK has favoured reforming the ECT rather than leaving it. However, modernisation efforts have repeatedly failed, and the Committee on Climate Change (CCC) has said that reforms are "insufficient".²⁴ This has led to several countries withdrawing. In the past year, Spain, France, the Netherlands, Poland, Slovenia, and Germany have signalled plans to leave the controversial agreement, and in July 2023, the European Commission proposed a coordinated exit for all EU Member States.²⁵ The CCC notes that as climate-friendly governments exit en masse, the task of bringing the ECT in line with climate commitments becomes "increasingly unlikely".²⁶

On 21 February 2024, the UK finally announced its withdrawal from the ECT owing to its incompatibility with climate commitments, with the exit taking effect in one year's time.

This welcome decision responds to a solid mandate to leave the ECT in the UK: less than one in ten people think the UK should remain in the treaty²⁷ and in January 2023, the CCC formally recommended exiting.²⁸ Looking forward, it is important that the UK's exit is part of a coordinated withdrawal with other climate-progressive countries in order to avoid the ECT's 'sunset clause' (Article 47). This harmful clause enables firms to launch cases against governments for a further 20 years after a country's exit.²⁹ Italy, for example, has faced at least seven arbitration claims since it departed from the ECT, including the case brought by Rockhopper in 2017.³⁰ The sunset clause risks the UK receiving claims from fossil fuel companies as late as 2045, posing a severe threat to the government's 2050 Net Zero target. However, a coordinated exit from a mass of countries allows states to agree that they will not be subjected to the sunset clause, and would ensure that the UK is not exposed to future litigation and prevent the ECT from undermining climate policies for decades to come.

Recommendation

The Energy Charter Treaty has no place in today's world, where policies, investments, and international agreements must be geared towards ending our dependence on carbon and moving towards renewable energy. With just 100 companies responsible for over 70% of global greenhouse gas emissions since 1988,³¹ the ECT hands the power to derail much-needed action to some of our planet's most climate-wrecking entities.

EJF welcomes the UK's recent decision to withdraw from the Energy Charter Treaty, and urges the government to cooperate internationally with other countries to secure a coordinated exit, to enable exemption from the sunset clause and protect our planet from fossil fuel profiteers.



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For more information or to meet with a policy expert in this area, please email:
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