The Energy Charter Treaty (ECT) is an international investment agreement that “establishes a multilateral framework for cross-border cooperation in the energy industry”. The agreement covers all aspects of commercial energy activities, including trade, transit, investment and energy efficiency. The contract is legally binding and includes dispute resolution procedures.
Among environmentalists and activists, this agreement is the epitome of corporate evil; for lobbyists and five elite law firms and arbitrators he is an inexhaustible source of high income (there is a well-known example when three arbitrators in one case received a total of 800 thousand euros. One arbitrator 400,000 and the other two each 200,000. An even better example is when one the corporation spent $ 7 million on attorney’s fees alone, which later had to be paid by the state that lost the dispute.). It is a contract that allows corporations to successfully threaten states that want to reduce their dependence on fossil fuels, and unhindered plunder of resources and profits.
One of the better known examples of such actions is the 2009 lawsuit filed by Vattenfall against Germany. The Swedish energy company has sued Germany, seeking 1.4 billion euros in damages over environmental restrictions imposed at one of its coal-fired power plants. The lawsuit was settled in 2011 after the local government agreed to ease the restrictions, exacerbating impacts on the Elbe River’s ecosystem. In 2012, Vattenfall sued again seeking 6.1 billion euros (including interest) for lost profits associated with two of its nuclear reactors. This case challenges the decision to accelerate Germany’s phasing out of atomic energy. By September 2020, it had led to 22 million euros in legal defense costs for German taxpayers. ”The case is still active. The Corporate Europe Observatory cites this case as an example of a corporate fight against the environment.

Parallel legal system for profit protection

The Energy Charter Treaty (ECT) was signed as an international agreement in 1994. It gives energy investors special rights, such as jurisdiction, not in the country’s judicial system, but in private arbitration courts. The rights secured by this treaty give investors quite broad powers such as “the privilege of suing governments directly outside the existing courts, in arbitral tribunals consisting of three private lawyers, arbitrators”. In these courts, fossil companies are demanding large amounts of compensation from states for actions they claim to have damaged their investments, according to the Corporate Europe Observatory (CEO), adding that by October 2020, 134 such claims had been filed in the first ten years. The CEO emphasizes that arbitration allows for the secrecy of proceedings, so the actual number of corporate claims is likely to be even higher. According to the same organization, as many as

66 percent of the lawsuits were filed by an EU-based corporation. As many as 60 percent of the known lawsuits, the arbitrators ruled in favor of corporations whose damages went to a total of $ 53 billion in taxpayer funds. The CEO points out that the amount of outstanding liabilities to investors in 2020 was another $ 28 billion, which is roughly the amount needed to make the whole of Africa more resilient to climate change. (In a brief digression, we say that these funds that could be directed to Africa are enough to create new and green jobs, which would then reduce the pressure of migrants on the borders of the European Union.)
The ECT was signed more than two decades ago without much public debate. Its task is to protect all investments in the energy sector, including coal mines, oil fields and gas pipelines. Any action by the state that "harms the company's profits" under this contract may be challenged outside the existing courts, in arbitration. When they lose, and often lose, states are forced to pay companies huge amounts of compensation. Some added examples are those of oil company Rockhopper, which is suing Italy over a ban on new offshore oil drilling. Coal-based Uniper / Fortun is threatening the Netherlands with a lawsuit for giving up coal. Several Eastern European countries have been sued for steps taken to lower electricity prices and consequently reduce the profits of energy companies.
Illustrated examples of lawsuits show how ECT can also be used against government activities to reduce energy poverty, and not just as one of the most important barriers to climate protection. The European Commission has called ECT an "obsolete and unsustainable" treaty that needs to be revised. Thus, in December 2020, the third round of negotiations on ECT amendments was held. As neither this round nor the previous one has moved much in the direction of climate protection, a new round of negotiations is scheduled for March this year. In anticipation of this, below are a few examples of myths promoted by ECT lobbyists, and their dismantling collected by the Corporate Europe Observatory based on an extensive body of research.

The fantasies of the secretariat and the government

Let's say something more about the context of ECT. As EU member states, whose administrative center also includes the ECT secretariat in Brussels, prepare to leave the treaty, ECT lobbyists are working tirelessly to include African and other countries in the global south in the treaty. For example, Italy has already come out, Spain sent strong messages in December that, as far as it is concerned, the treaty is dead, and parliamentarians from all over Europe have called on EU member states to leave the ECT together. Of course, if "ECT" continues to "protect dirty energy sources".
We have already mentioned that the ECT Secretariat is located in Brussels, and now we say

that only 25 full-time people work there with a budget of 4 million euros, which is mostly financed by EU member states. The same countries whose MEPs are now appealing to the Commission for the whole EU to leave the ECT. That secretariat is currently conducting negotiations that would change the ECT so that it still exists but is somewhat greener. They fantasize about modernizing the ECT (the rhetoric we hear regularly when it comes to NATO) and supplementing it as a "supplement to the Paris Agreement," which, of course, antagonizes environmentalists and green activists. The ingenious idea of the Secretariat is, for example, to give investors compensation for the complete abolition of fossil fuels.
As far as governments are concerned, they are on behalf of the ECT signatory state; they have the ultimate decision-making power to keep, change, or terminate the contract, so appeals to themselves are actually a cynical show for the public. "Currently, no Member State seems interested in getting rid of the ECT completely," the CEO wrote. The ministry's economic affairs are often particularly interested in maintaining an agreement that gives domestic investors a powerful tool to secure profits abroad, "said the CEO. Nevertheless, faced with an increasingly negative public reaction to the Treaty, the European Commission needs to present some results of the modernization negotiations that could make the ECT seem compatible with the Paris Agreement and the European Green Agreement. There is, however, a serious risk that minor ECT reforms will be approved and presented as major changes that address all of its problems, the Corporate Europe Observatory concludes.
Source: bilten.org