

European Union will have to end investments protection in the fossil fuels sector. The Energy Charter Treaty, which dates back to the 1990s, severely restricts Europe's ability to change regulations in the energy sector, with many EU member states facing court actions worth billions of euros, write a group of MEPs. If the treaty cannot be reformed, then it must be scrapped, they argue.

Imagine living in a country where citizens have understood that we need drastic steps to combat climate change. Imagine the Parliament and Government have developed a bold but realistic plan to phase out fossil fuels in a time frame that corresponds with keeping global warming within 1,5 degree. Covid recovery funds will be used to accelerate the energy transition. But then fossil fuel companies and energy providers decide to challenge it all and claim billions in compensation, based on an obscure agreement, the Energy Charter Treaty (ECT). They want the public to pay for them to stop wrecking the climate. Does it sound like a silly story? Well, it is not. It is a real possibility that could materialise if we do not take action now.

Members of the European Parliament from different countries and from different political groups share a deep concern about the TCE, which negotiations for a "modernisation" start on 6 July. Many EU countries have experienced directly how this international investment protection agreement made to protect the fossil energy sector represents a major obstacle to reaching our climate objectives.

The ECT restricts the ability of the EU and its Member States to change regulations and policies in the energy sector. Germany has been sued twice by the Swedish energy multinational Vattenfall. In the first case, the company succeeded to relax environmental standards imposed on a coal-fired power plant near Hamburg. Now, it is demanding over €6.1 billion for lost profits related to two of its nuclear power plants following the German nuclear phase-out decided after the 2011 Fukushima disaster. Such cases could easily happen again when we phase out fossil fuel.

The mere threat of a complaint can be enough to push States not to take ambitious measures to implement their climate commitments. In 2017, a Canadian company, Vermillon, threatened the French government with legal action through the Energy Charter Treaty if it adopted a law ending fossil fuel exploration and extraction on the whole French territory by 2040. Following this, and other pressures, the government backed off: the final law was modified, allowing for oil exploitation permits to keep on being delivered.

The continuation of protection for fossil fuels investments is increasing tremendously the cost of the energy transition for taxpayers and therefore directly undermining Europe's climate neutrality target defined in the European Green Deal, launched by the President of

the EU Commission, Ursula von der Leyen. The Netherlands has been put on notice a few weeks ago for a dispute based on the Energy Charter Treaty by the German energy company Uniper, for an amount up to €1 billion in compensation, following the Dutch decision to phase-out coal for electricity production. Such an arbitration case would take years to resolve, in the meantime sowing insecurity amongst legislators in other countries and potentially weakening or delaying climate policies.

While still in shock from the Covid health and economic crisis, countries might become subject to a new peak in investors' claims due to exceptional measures adopted in recent months. Spain was already strongly targeted after the last financial crisis. This country is, to date, the most attacked State under the ECT, accumulating a total of 48 complaints, of which 16 have already been resolved in favour of the investor. This represents more than €1 billion. This figure is equivalent to almost 7 times the budget committed by Spain to contribute to the UN Green Fund to support actions against climate change. But there are still 28 unresolved claims against Spain, which could cost Spanish tax payers to be up to €8 billion.

All those cases against EU member states should provide enough evidence to the European Commission that the Energy Charter Treaty is an outdated agreement, incompatible with achieving the objectives of the Paris climate agreement. As Yamina Saheb, former head of the Energy Efficiency Unit of the ECT International Secretariat and author of the IPCC, points out cumulative emissions protected by the ECT, since its entry into force in 1998 until January 2020, are estimated at 87 Gt CO<sub>2</sub>, out of which 62% are CO<sub>2</sub> emissions from direct intra ECT investments in fossil fuels.

We are aware that the Energy Charter Treaty is currently under review. Unfortunately, do not expect this process to bring the ECT in line with the Paris agreement. To achieve this, fossil fuels would have to be excluded from the treaty's protection. Moreover, the Investor-State Dispute Settlement (ISDS) mechanism that allows companies to claim such absurd amounts of compensation, needs to be scrapped or fundamentally reformed and limited. None of the ECT signatories - including the EU - is currently putting forward the above proposals, making it clear from the start that the reform will not make the ECT compatible with our climate commitments, nor address concerns that the arbitration mechanism in the ECT is incompatible with EU law.

This is why we urge the EU and Member States to raise ambitions in their negotiation position to address these shortfalls, or to develop pathways to jointly withdraw from the Energy Charter Treaty in case negotiations fail.

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## Protection of fossil fuels sector investments must stop in Europe