

EU fossil-fuel companies cannot use the controversial Energy Charter Treaty (ECT) to sue member states and claim compensation for the impact of government policies, the European Court of Justice has ruled.

The ruling casts doubts over a number of ongoing cases.

The little-known ECT, which dates back to the early 1990s, contains a highly-controversial mechanism used by companies to challenge national government decisions to gradually phase out fossil fuel-based energy.

However, the EU's top court has now clarified that companies cannot use this mechanism, formally known as the Investor-State Dispute Settlement, in intra-EU disputes – a topic widely debated for years.

In a ruling published on Thursday (2 September), the court confirmed that this mechanism “must be interpreted as not applicable to disputes between a member state and an investor from another member state concerning an investment made by the latter in the first member state”.

It adds that the “preservation of the autonomy and the particular nature of EU law precludes the same obligations under the ECT from being imposed on member states”.

This is important because the majority of ECT disputes (some 60 percent) have taken place between members of the EU.

Earlier this year, the Netherlands was sued by the German companies RWE and Uniper over the Dutch coal phase-out law, seeking billions in compensation under this treaty.

Environmental NGOs have pointed out that the ruling shows that ongoing procedures should not have started in the first place.

While investors, their lawyers and arbitrators are obliged to comply with the ruling, “it remains to be seen whether the tribunal in question will accept to decline its competence in the RWE and Uniper case,” Amandine Van Den Berghe, a lawyer at NGO ClientEarth, told EUobserver.

“Given the scale of the climate crisis, it is not only abhorrent that EU companies have used the Energy Charter Treaty to claim compensation, but it is now confirmed that it is also illegal”, said Van Den Berghe.

“Governments should be able to take action on climate change without fear of arbitration challenge from fossil fuel companies”, she added.

Under negotiations on modernising the treaty, the European Commission has attempted to reform it to make it compatible with the Paris Agreement, and EU's target to reach climate-neutrality by 2050.

But documents leaked earlier this summer revealed “limited progress” in the

negotiations. This is partly because any changes to the ECT would require a unanimous decision from all contracting parties – including fossil-fuel energy-exporting countries like Kazakhstan, Turkmenistan, and Uzbekistan.

Given that the ECT is seen as potentially blocking a transition to clean energy, more than 400 NGOs have called on EU leaders to initiate the withdrawal process before November's UN climate talks in Glasgow (COP26).

The call has been echoed by some MEPs and EU member states, including France and Spain.

"Its reform is failing, fossil fuel firms are using it to attack climate policies, over a million citizens are calling for it to be scrapped and now the highest court of the EU has declared it illegal. Quitting the ECT should be a no-brainer," said Cornelia Maarfield, a campaigner from NGO CAN Europe.

Source: euobserver