

Today, the European Court of Justice stated that EU energy companies will no longer be allowed to sue EU governments using the Energy Charter Treaty - throwing into doubt a number of ongoing billion-euro arbitrations.

As part of a ruling on the legality of a dispute between Moldova and Komstroy Investment, the European Court of Justice declared that Investor-State Dispute Settlement (ISDS) cases using the Energy Charter Treaty are “not applicable” within the EU – i.e. between an investor in the EU and an EU member state. Specifically, article 26 of the Energy Charter Treaty (ECT), which allows for so-called corporate court arbitrations, is not valid intra-EU.

Exit the ECT

Friends of the Earth Europe calls on the European Commission and EU member states to withdraw from the ECT.

Paul de Clerck, economic justice coordinator at Friends of the Earth Europe hailed the ruling: *“The climate crisis cannot afford billion-euro corporate compensation claims every time our governments take a climate action decision. It’s good news that today the European Court of Justice recognises that such investment protection within the EU based on the Energy Charter Treaty is not in line with EU law. This underlines once again that the EU and its member states must leave the climate killer Energy Charter Treaty, which mainly serves to protect fossil fuel interests”.*

Fossil fuel protection treaty

The ECT is a treaty from the 1990s that protects the interests of energy investors – mainly fossil fuel companies. It is increasingly being used by investors to challenge governments that introduce ambitious climate policies, and campaigners accuse it of undermining the Paris Agreement and the European Green Deal.

The European Court of Justice decided in 2018, in the Achmea ruling, that ISDS in intra-EU Bilateral Investment Treaties is not compatible with EU law. Now the ECJ extends that to intra-EU ISDS cases based on the ECT.

In recent years, the Energy Charter Treaty has become the source of the majority of ISDS cases in Europe – such as billion euro claims of RWE and Uniper against the Dutch government.

Negotiations to revise the ECT are ongoing since 2019 but have so far not resulted in any concrete steps to bring it in line with the EU’s climate ambitions or the Paris Agreement. The reforms also do not address the problems with the ISDS model that the ECJ referred to in its decision today. Several countries, such as France and Spain, are critical of the ECT and have asked the European Commission to prepare an exit strategy.



The Energy Charter Treaty has been drastically limited in the EU by
the European Court of Justice

Source: Friends of the Earth Europe