

# The Energy Charter Treaty

## The fossil fuel companies' secret weapon

January 2024

- Since late 2022, a number of European countries have announced their intention to withdraw from the Energy Charter Treaty (ECT), an international agreement covering the energy sector, citing the treaty's fundamental threat to climate action. Germany, France, the Netherlands, Spain, Poland, Slovenia, Denmark and Luxembourg are among them. Several withdrawals have now taken effect.
- In September 2023, the UK government committed to a review of its membership of the Energy Charter Treaty, including to consider withdrawal if proposed modernisation reforms were not agreed at November's Energy Charter Conference.
- The conference concluded without proposed reforms even being discussed. The government has acknowledged that there is now "no clear route for modernisation to progress". The UK government should therefore now take the decision to withdraw from the ECT.

### What is the Energy Charter Treaty?

The Energy Charter Treaty (ECT) is an investment agreement specifically for the energy sector which, until recently, had over 50 member states. It dates back to the mid-1990s, a time when the focus was on access to oil and gas reserves in countries of the former Soviet Union, and climate ambition was low.

At the core of the ECT is the contentious investor-state dispute settlement (ISDS) mechanism. This allows foreign companies to sue governments in secretive tribunals outside of the national legal systems. The amounts at stake can be in the billions of pounds. The ECT has already generated at least 135 claims, making it the most frequently invoked international investment agreement in the world. At over £120bn, the UK has by far the [largest value of fossil fuel assets exposed to ISDS risks](#) under the ECT.

The ECT has been substantially weakened by a cascade of withdrawal announcements since late 2022. [Germany](#), [France](#), the [Netherlands](#), [Spain](#), [Poland](#), [Luxembourg](#) and [Slovenia](#), among others, have all set out their intention to withdraw from the ECT, with several of those withdrawals recently taking effect. Italy already left in 2016. The European parliament has voted for a coordinated withdrawal of

all EU countries and the [European Commission has adopted this position](#).

The UK government's position, set out in September, is a stated [commitment](#) to a review of its membership of the Energy Charter Treaty, including to consider withdrawal if proposed modernisation reforms were not agreed at November 2023's Energy Charter Conference. Given that this timeframe has now elapsed, the UK should now join other member states in a coordinated withdrawal from the ECT.

### Threats to climate action

The Energy Charter Treaty poses a threat to climate action, particularly in two ways:

- **Increasing the cost of climate action.** Research shows that if the UK follows the International Energy Agency's recommended pathway and cancels oil and gas projects in the pipeline, it could face legal claims of [up to £9.4 billion from the ECT alone](#). Globally, the risk is [up to £90 billion](#).
- **Regulatory chill.** This occurs when the mere threat of legal action deters governments from taking action that is needed on climate. Member states have [acknowledged this was already happening](#).

Consensus on these risks is now widespread. In its 2023 report, [the Climate Change Committee \(CCC\) set out](#) that the ECT “represents risks to both a timely climate transition and to the taxpayer” and called on the UK government to announce its intent to withdraw. UN climate scientists warned in an [IPCC report](#) of the risk of “ISDS being able to be used by fossil-fuel companies to block national legislation aimed at phasing out the use of their assets”, highlighting the Energy Charter Treaty. Last year, the UN Special Rapporteur on human rights and the environment warned that ISDS is a “[daunting obstacle](#)” to governments’ climate plans.

High profile cases which demonstrate the threats to climate action brought under the ECT include [Rockhopper vs Italy](#), under which UK oil company Rockhopper won a case against Italy over a ban on offshore oil drilling, securing £210 million – over six times what it had spent on the project.

In [Ascent vs Slovenia](#), fracking firm Ascent Resources launched legal action against Slovenia over requirements for an environmental impact assessment and now also over a subsequent ban on fracking introduced by parliament. The case is pending. [Multiple studies](#) predict that a lot more cases will arise in future as states take more ambitious steps to phase-out fossil fuels.

## Failed reform

The ECT’s reform process was initiated in 2017, and in 2022, a weak package of proposals was put together, leading to a wave of withdrawals. These countries recognised that even the proposed reforms were fundamentally incompatible with their climate goals. The draft reforms would mean that:

- existing fossil fuel projects would remain protected for at least ten years – more if the changes take a while to enter into force;
- some gas projects would continue to be protected until 2040;
- new investments would not be protected after August 2023, but projects that have just been given new or extended licences, like the Cambo oil field, would;

- all of the existing cases can still continue.

To stand any chance of passing, such reforms would require consensus among all contracting parties, of which there is currently no prospect, and so these proposals were excluded from the agenda at November 2023’s Energy Charter Conference for the second consecutive year.

## The UK position

The government has long been sceptical of the Treaty in its existing form. In June 2022, the then energy minister, Greg Hands, said:

*“The UK cannot support an outdated treaty which holds back investment in clean energy and puts British taxpayers at increased risk from costly legal challenges.”*

*(Press release 24/6/22)*

At that stage, the government had placed faith in the reform process. It is welcome that the government has now recognised the failure of this process, [acknowledged](#) that there is no clear route to modernisation, and committed to a review of the UK’s membership. However, now that the government’s own November deadline has elapsed, the UK should now take the decision to leave the Energy Charter Treaty, ideally as part of a coordinated withdrawal, to avoid being left behind in an obsolete and collapsing treaty. Withdrawal would be the most effective way to protect taxpayers, the planet and our future.

## Suggested questions to the minister

What next steps does the department intend to take towards withdrawal from the Energy Charter Treaty membership given the ECT’s failure to reach an agreement on modernisation?

What is the current status of the government’s review of the UK’s membership of the ECT? Where and how is this review being carried out?

What consultation has the department held with representatives of other ECT signatory states regarding a co-ordinated withdrawal?

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