



Institut Veblen pour les réformes économiques



Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

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This note draws on analysis by Clémentine Baldon and Rosanne Cravea ([IISD, Overview of Recent Fossil Fuel Arbitration Cases Under the Energy Charter Treaty, January 2025](#)) and updated data from the [UNCTAD Investment Policy Hub](#).

Table of Contents

Introduction	3
1. The vitality of the ECT in the fossil fuel sector	4
2. Detrimental impacts of ECT cases for climate action and environmental protection	7
3. Need to neutralize the ECT's sunset clause	8
Annex - Emblematic cases	10

Introduction

The Energy Charter Treaty (“ECT”), the most widely used investment treaty, has become highly controversial for enabling investors to challenge national policies aimed at achieving climate goals through its ISDS mechanism, leading to a phenomenon known as “regulatory chill”.¹ Despite modernization efforts initiated in 2009 - culminating in an agreement in principle in June 2022 and formal adoption in December 2024, the treaty still fails to align with the Paris Climate Agreement, according to the French High Council on Climate² and the British Climate Change Committee³.

In 2022, the European Parliament described the ECT as an “outdated” instrument hindering EU climate ambitions.⁴ In 2023, the European Commission asserted that the ECT was incompatible with initiatives such as the EU Climate Law and proposed a coordinated EU withdrawal from the ECT.⁵ The EU Parliament endorsed the Commission’s proposal on 11 April 2024⁶ and the Council gave its final green light on 30 May 2024.⁷

In parallel, several States (France, Germany, Poland, Luxembourg, Portugal, Slovenia, Spain, the Netherlands, the United Kingdom and Denmark) have already officially exited or have announced their intent to leave (Ireland, Lithuania) the ECT⁸.

Despite these advancements, the situation is not yet under control as many states remain members of the ECT. For the latest who have notified their withdrawal, the decision only becomes effective after 12 months.

The ECT therefore continues to have a substantial impact as it serves as the basis for arbitral proceedings, particularly within the fossil sector and including against EU Member States and even the EU itself. Besides, its “sunset” clause⁹ will prolong its impacts as regards existing investments for 20 more years, unless it is neutralized (see part 3).

¹ This refers to the impact that initiating or threatening ISDS proceedings can have upon States in scaling down, delaying or refraining from adopting public interest regulations to avoid the cost of compensation and litigation. Baldon law firm, Regulatory chill, Note annexed to the claim lodged by 5 young climate victims at the ECHR against twelve States for their participation in the ECT, filed in June 2022., https://www.exitect.org/sites/default/files/2022-06/Summary_Note_on_Regulatory_Chill.pdf See also, K. Tienhaara, “Regulatory chill in a warming world: The threat to climate policy posed by investor state dispute settlement”, 2018 Transnational Environmental Law.

² [Opinion](#) about the ECT modernization, October 2022: “The High Climate Council concludes that the ECT, even in a modernized form, is not compatible with the 2030 climate commitments and objectives of France and the European Union.”

³ [2023 Progress Report to Parliament](#), British Climate Change Committee, June 2023: “Membership of outdated agreements such as the Energy Charter Treaty risks slowing momentum on low-carbon transition”; “the UK should reconsider its membership of outdated agreements such as the Energy Charter Treaty (Box 2.4) to ensure it is well placed to keep pace with the growing momentum of the low-carbon transition”.

⁴ [Resolution](#) of the EU Parliament of 24 November 2022 on the outcome of the modernisation of the ECT.

⁵ [Proposal](#) of the Commission of 7 July 2023 for a Council decision on the withdrawal of the Union from the ECT.

⁶ [Recommendation of the European Parliament](#) of 11 April 2024.

⁷ [Council Decision \(EU\) 2024/1638](#) of 30 May 2024 on the withdrawal of the Union from the ECT.

⁸ Italy had already exited in Jan 2016. For the other countries, see: <https://www.endfossilprotection.org/en/latest-news>

⁹ Article 47(3) of the ECT

Moreover, following the formal adoption of the modernized treaty on December 3, 2024, the international Secretariat is likely to resume the process of geographic expansion, which had been put on hold during the modernization process.

This note provides an overview of recent cases based on the ECT (including in the fossil fuel sector) and shows the continuing harmful effects of the treaty on climate actions and the need to neutralize the sunset clause.

1. The vitality of the ECT in the fossil fuel sector

Between April 2022, on the eve of the announcement of the agreement in principle on the modernization of the treaty, and December 31, 2024, **at least 24 publicly known cases have been recorded under the ECT¹⁰** (see in annex the most emblematic cases):

- **EU member States (or the EU) are respondents in 20 out of the 24 cases.**
- **EU member States are the home country of the investor in 14 cases, and the United Kingdom in 8 cases.**
- **Half (12) are intra-European cases**, involving at least one investor from an EU member State against another EU member State. However, in 2021, the European Court of Justice ruled that such ‘intra-EU disputes’ based on the ECT are incompatible with European law¹¹.
- **16 cases involve activities related to fossil fuel investments.**

10 These are the ones made public on the official portal of the [Investment Dispute Settlement Navigator | UNCTAD Investment Policy Hub](#) (last online consultation on May 13, 2025). The list of cases recorded on the Energy Charter Treaty website is even less up to date, as it only goes up to 2022. [List of cases - Page 15 of 15 - Energy Charter Treaty](#)

¹¹ Judgment of the Court (Grand Chamber) of 2 September 2021. [République de Moldavie v Komstroy LLC](#).

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

Year	Case name	Administrating institution	Status	Respondent State	Home State of investor	Economic sector	Details of investment	Arbitrators	Decisions	Amount claimed (in millions)	Amount awarded (or settled for)
2024	Berkeley Exploration v. Spain (ICSID Case ARB/24/22)	ICSID	Pending	Spain	United Kingdom	Mining and quarrying	Exploitation concession held by Berkeley Minera España SA for the Retortillo uranium deposits in the Salamanca province.	Name not available - President Reichert, K. - Claimant Douglas, Z. - Respondent	Data not available	1000.00 mln USD	Data not available
2024	ExxonMobil v. Netherlands (ICSID Case ARB/24/44)	ICSID	Pending	Netherland	Belgium	Mining and quarrying	Extraction of crude petroleum and natural gas	Data not available	Data not available	Data not available	data not available
2024	Lotus v. Turkmenistan (II) (ICSID Case ARB/24/13)	ICSID	Pending	Turkmenistan	Türkiye	Construction	Civil engineering	Name not available - President Greenwood, L. - Claimant Townsend, J. M. - Respondent	Data not available	Data not available	data not available
2024	MOL v. Croatia (II) (ICSID Case ARB/24/19)	ICSID	Pending	Croatia	Hungary	Mining and quarrying Electricity, gas, steam and air conditioning supply	Shareholding (49 per cent) in INA-Industrija nafte d.d., an oil and gas company.	King, B. D. - President Garibaldi, O. M. - Claimant Viñuales, J. E. - Respondent	Data not available	Data not available	data not available
2024	Mondi v. Poland (ICSID Case ARB(AF)24/1)	ICSID	Pending	Poland	United Kingdom	Electricity, gas, steam and air conditioning supply	Investment in a renewable energy generation project.	Bull, C. - President Reichert, K. - Claimant Mourre, A. - Respondent	Data not available	Data not available	data not available
2024	Sauna UK BidCo v. Finland (ICSID Case ARB/24/38)	ICSID	Pending	Finland	United Kingdom	Electricity, gas, steam and air conditioning supply	Electricity, gas, steam and air conditioning supply	Data not available	Data not available	Data not available	Data not available
2024	Stratus v. Hungary (ICSID Case ARB/24/6)	ICSID	Pending	Hungary	Cyprus	Electricity, gas, steam and air conditioning supply	Electricity, gas, steam and air conditioning supply	Kaufmann-Kohler, G. - President Blanch, J. - Claimant Sands, P. - Respondent	Data not available	Data not available	Data not available
2024	Suomi Power and others v. Finland (ICSID Case ARB/24/37)	ICSID	Pending	Finland	Netherlands Sweden	Electricity, gas, steam and air conditioning supply	Electricity, gas, steam and air conditioning supply	Data not available	Data not available	Data not available	Data not available
2024	Wintershall v. Russia (II)	Data not available	Pending	Russian Federation	Germany	Mining and quarrying	Extraction of crude petroleum and natural gas	Data not available	Data not available	Data not available	Data not available
2023	AET v. Germany (ICSID Case ARB/23/47)	ICSID	Pending	Germany	Switzerland	Electricity, gas, steam and air conditioning supply	Electricity, gas, steam and air conditioning supply	Data not available	Data not available	Data not available	Data not available
2023	Klesch and Kalundborg Refinery v. Denmark (ICSID Case ARB/23/48)	ICSID	Pending	Denmark	United Kingdom	Manufacturing	Manufacture of coke and refined petroleum products	Data not available	Data not available	Data not available	Data not available

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

2023	Klesch and Raffinerie Heide v. Germany (ICSID Case ARB/23/49)	ICSID	Pending	Germany	United Kingdom	Manufacturing	Manufacture of coke and refined petroleum products	Data not available	Data not available	Data not available	Data not available
2023	Klesch v. EU (ICSID ARB(AF)/23/1)	ICSID	Pending	European Union	Germany; Denmark; United Kingdom	Manufacturing	Manufacture of coke and refined petroleum products	Data not available	Data not available	Data not available	Data not available
2023	Suntech v. Italy (ICSID Case ARB/23/14)	ICSID	Pending	Italy	Switzerland	Electricity, gas, steam and air conditioning supply	Investment in renewable energy generation project.	Data not available	Data not available	Data not available	Data not available
2022	Aderlyne v. Romania (ICSID Case ARB/22/13)	ICSID	Pending	Romania	Cyprus	Electricity, gas, steam and air conditioning supply	Investments in renewable energy projects.	Bienvenu, P. - President; Gearing, M. - Claimant; Gunter, P.-Y. - Respondent	Data not available	Data not available	Data not available
2022	Ascent v. Slovenia (ICSID Case ARB/22/21)	ICSID	Pending	Slovenia	United Kingdom ; Malta	Mining and quarrying	Participating interest of 75% in a joint venture for the development and operation of the Petišovci oil and gas field (with state-owned company Geoenergo); 100% shareholding of local subsidiaries Ascent Resources d.o.o. and Trameta d.o.o.	Fathallah, R. - President; Reichert, K. - Claimant; Stern, B. - Respondent	Data not available	500.00 EUR (512.80 USD)	Data not available
2022	Astronergy v. Bulgaria (ICSID Case ARB/22/32)	ICSID	Discontinued for unknown reasons	Bulgaria	Netherlands	Electricity, gas, steam and air conditioning supply	Investments in photovoltaic power plants through Astronergy Solar Bulgaria Ltd.	Data not available	Order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 56 dated 18 August 2023	Data not available	Data not available
2022	Clara Petroleum v. Romania (ICSID Case ARB/22/10)	ICSID	Pending	Romania	United Kingdom	Mining and quarrying	Investments in the exploration and production of hydrocarbons.	van den Berg, A. J. - President; Schill, S. - Claimant; Thomas, J. C. - Respondent	Data not available	Data not available	Data not available
2022	Encavis and others v. France (ICSID Case ARB/22/22)	ICSID	Pending	France	Germany	Electricity, gas, steam and air conditioning supply	Investments in a renewable energy generation enterprise.	Data not available	Data not available	Data not available	Data not available
2022	Ershova and Jeršov v. Bulgaria (ICSID Case ARB/22/29)	ICSID	Pending	Bulgaria	Lithuania	Mining and quarrying	Investments in "Petrol" AD JSC, a local oil and gas company, through a shareholding in "Petrol Holding" AD.	Fernández-Armesto, J. - President; Paulsson, J. - Claimant; Landau, T. - Respondent	Decision on the Respondent's objections pursuant to ICSID Arbitration Rule 41(5) dated 25 July 2023 https://www.italaw.com/sites/default/files/case-documents/180322_0.pdf	1000.00 USD	Data not available
2022	Ostchem v. Ukraine (SCC Case No. 2022/006)	SCC	Pending	Ukraine	Cyprus	Electricity, gas, steam and air conditioning supply	Rights under a natural gas purchase and sale contract with a state-owned company.	Data not available	Data not available	Data not available	Data not available

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

2022	Rotalin v. Moldova (ICSID Case No. ARB(AF)/22/4)	ICSID	Pending	Moldova	Liechtenstein	Electricity, gas, steam and air conditioning supply	Ownership (100%) of locally incorporated subsidiary, Rotalin Gaz Trading S.R.L., holding licences for the supply and distribution of natural gas.	Scherer, M. - President; Hanefeld, I. - Claimant; Kalicki, J. E. - Respondent	Data not available	62.00 USD	Data not available
2022	Towra v. Slovenia (ICSID Case No. ARB/22/33)	ICSID	Pending	Slovenia	Luxembourg	Mining and quarrying	Minority shareholding in locally incorporated company Premogovnik Velenje, d. o. o., which operates the Velenje coal mine in the Šaleška valley.	Blanch, J. - President; Poncet, C. - Claimant; van den Berg, A. J. - Respondent	Data not available	60.00 EUR (63.20 USD)	Data not available
2022	WOC Photovoltaik and others v. Spain (ICSID Case No. ARB/22/12)	ICSID	Pending	Spain	Germany	Electricity, gas, steam and air conditioning supply	Investments in renewable energy generation projects.	Reinisch, A. - Claimant; Sreenan, P. - Respondent; Blanch, J. - President	Data not available	Data not available	Data not available

Source: UNCTAD Investment Hub

Legend

	Intra EU cases
	Fossil fuel investment
	Renewable energy investment
State	EU Member State
UK	UK home-state of investor

2. Detrimental impacts of ECT cases for climate action and environmental protection

These ongoing cases demonstrate that **the ECT remains a strategic tool to fossil fuel investors to circumvent environmental and climate change regulations and mitigate the financial impacts of such policies**. Investors persistently resort to the ECT's ISDS mechanism against Member States and the EU to safeguard their interests, even when their projects are hindered due to environmental, climatic or energy policy reasons. **This reliance on the ECT raises serious concerns regarding States' ability to implement robust environmental and climatic regulations without facing costly arbitration claims**. States involved in these proceedings and the EU could be required to compensate foreign investors for implementing public policies aimed at reducing greenhouse gas emissions, protecting the environment, prohibiting the exploration of new fossil fuel resources, promoting renewable energy or taxing excess profits of energy companies to ensure energy security (windfall tax).

ECT claims or risks thereof have sometimes led to very favourable settlements for fossil fuel investors, undermining States' regulatory space and environmental and climate goals. Indeed, in the absence of rules on the determination of compensation, investment tribunals have adopted an approach to damage valuation based on hypothetical lost profits across the investment's entire life

cycle.¹² For example, in the *Rockhopper v Italy* case, where the Italian government prohibited new oil exploration in the Adriatic Sea to protect marine biodiversity, the tribunal ruled that this decision constituted unlawful expropriation entitling the investor to around €250 million in compensation with interest.¹³ This sum – which was mainly intended to cover the loss of future profit – is considerable in comparison to the initial investment of around €29 million made by Rockhopper.¹⁴ In addition, the compensation obtained by Rockhopper through this arbitration allowed it to reinforce its fossil fuels operation in the Falkland Islands¹⁵.

3. Need to neutralize the ECT's sunset clause

While the EU¹⁶, several of its Member States and the UK¹⁷ have officially decided to withdraw from the ECT, **the treaty's legacy coupled with its sunset clause, ensure that its effects will be long-lasting.** Indeed, the sunset clause enables investors to initiate proceedings for a period extending up to 20 years post-withdrawal, which presents a significant challenge to de-carbonisation efforts and the transition to a sustainable energy future. In *Rockhopper v Italy*, the investor lodged its claims even after Italy's withdrawal from the ECT in 2016. EU Member States are still at risk of having their climate policies challenged by fossil fuel investors years after their withdrawal from the ECT.

And the EU's approach of simply clarifying that intra-EU cases should not have been possible is not sufficient. The Commission's published a proposal¹⁸ confirming the inapplicability of intra-EU arbitration procedures under the ECT. The EC's proposal follows a joint declaration of June 2024 signed by all Member States¹⁹. Except for Hungary, all Member States supports the Commission's proposal. The text has already been approved by the ITRE and INTA Committees of European Parliament and will be voted on in plenary in June. On 8 May 2025, the Polish Presidency of the Council invited Member States to approve the EC's proposal.

Therefore, while the EU and UK's withdrawal from the ECT is a crucial step, it must be accompanied by robust strategies to address the Treaty's legal and financial consequences. **The EU and its Member States should engage in active negotiations towards an "inter-se" agreement aimed at neutralising**

¹² IISD, [Compensation Under Investment Treaties](#), November 2020, pp. 4 and 30-31; CCSI, [Damages in ISDS: Just Compensation or Highway Robbery? Remarks of George Kahale III](#), November 2020; European Parliament, *Report on the future of EU international investment policy: Motion for a resolution*, [A9-0166/2022](#), May 2022, para. 34.

¹³ *Rockhopper v Italy*, ICSID Case No. ARB/17/14, [Final Award](#), 23 August 2022.

¹⁴ T. Marzal, "Polluter Doesn't Pay: The Rockhopper v Italy Award", *EJIL: Talk!*, 19 January 2023.

¹⁵ <https://www.theguardian.com/business/2022/aug/24/oil-firm-rockhopper-wins-210m-payout-after-being-banned-from-drilling>

¹⁶ Council Decision (EU) 2024/1638 of 30 May 2024, above note 5.

¹⁷ "UK departs Energy Charter Treaty", *press release*, 22 February 2024.

¹⁸ [Proposal](#) for a Council Decision on the adoption by the European Atomic Energy Community of the Agreement on the interpretation and application of the Energy Charter Treaty between the European Union, the European Atomic Energy Community and their Member States COM/2024/256 final

¹⁹ [Declaration](#) on the legal consequences of the judgment of the Court of Justice in Komstroy and common understanding on the non-applicability of Article 26 of the Energy Charter Treaty as a basis for intra-EU arbitration

the sunset clause²⁰ with other non-EU States which have already withdrawn from the ECT (UK), or which might do so in the future. This is especially important as a third (8 out of 24) of the arbitration claims presented above were launched by UK- based investors, including 6 cases against countries that have notified their withdrawal or the EU. This was a recommendation from the British Council on climate change²¹.

In this regard, IISD published a model inter se agreement to neutralize the survival clause of the Energy Charter Treaty between the EU and non-EU ECT contracting parties²². Such an agreement would likely first be implemented between the UK and EU, but it is designed to be open for later accession by other State willing to neutralize the survival clause, including current and former ECT contracting parties.

A legal opinion published in April 2025 and commissioned by the Trade Justice Movement and Global Justice Now, confirms that the UK could enter into an “inter se agreement” with other countries to neutralise the ECT’s “sunset clause” and that no new legislation would be needed to ratify and implement such an agreement²³.

²⁰ N. Braoudakis, R. Craveia, C. Baldon, “[Neutralising the ECT Sunset Clause Inter Se](#)” (2024) *ICSID Review*.

²¹ See British Council on Climate Change, June 2023 [Progress in reducing emissions 2023 Report to Parliament](#) “With uncertain prospects for further reform, continued membership of the Energy Charter Treaty (ECT) represents risks to both a timely climate transition and to the taxpayer. There is a strong case for the UK to reconsider its membership, noting the opportunities for potential agreements with other exiting parties that could limit residual risks associated with ECT sunset clauses (Box 2.4). (Recommendation R2023-110)”.

²² IISD, [Model Inter Se Agreement to Neutralize the Survival Clause of the Energy Charter Treaty Between the EU and Other non-EU Contracting Parties](#), August 2024

²³ Trade Justice Movement, Global Justice Now, « [Legal advice: How the UK can fully exit the Energy Charter Treaty](#) » April 2025

Annex - Emblematic cases

- **Berkeley Exploration v. Spain (ARB/24/22)**

In May 2024, UK-based investor Berkeley Exploration filed a request for arbitration, seeking \$1 billion in damages from the Spanish government for its refusal to grant final approval for a uranium mine project. The project had initially been approved in 2013.

In April 2021, the Spanish government adopted an amendment to the draft Climate Change and Energy Transition Bill concerning the exploration and exploitation of uranium. The amendment provided that:

- new applications for exploration, investigation, and direct exploitation concessions for radioactive materials, as well as requests for their extensions, would no longer be accepted once the law came into force;
- existing concessions, along with ongoing proceedings and related applications, would continue under the previous legal framework.

The new law entered into force in May 2021. Relying on this law, Spain's Energy Ministry refused to grant final approval for the investor's Salamanca-based project in both 2021 and 2023.

Berkeley alleges that Spain's actions constitute violations of multiple provisions of the Energy Charter Treaty.

- **ExxonMobil Petroleum & Chemical BV v. Netherlands (ARB/24/44)²⁴**

ExxonMobil announced on 30 September 2024 that it had filed an Energy Charter Treaty claim against the Netherlands after the Dutch government decided to accelerate the closure of the Groningen gas field.

Exxon has operated a concession at Groningen since 1963 through NAM, its joint venture with Shell. In 2018, ExxonMobil and the Netherlands agreed to end gas production by 2030. The Dutch government then decided to shut down the Groningen site sooner, to ensure the safety of people living in the region. Indeed, more than 1,000 earthquakes have occurred at the site since drilling began. And ExxonMobil has always shied away from compensating the people who suffered these damages²⁵.

ExxonMobil accuses the previous Dutch government of taking measures that arbitrarily and disproportionately disadvantaged Exxon as an investor.

Despite the EU and UK exiting the ECT, ExxonMobil is suing the Netherlands through a Belgian investment company, which gives the dispute an intra-EU character.

²⁴ Case registered on October 21, 2024 <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/24/44>

²⁵ See SOMO, [ExxonMobil sues the Netherlands over gas field closure](#), 10 October 2024.

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

- **Azienda Elettrica Ticinese v Germany (ARB/23/47)²⁶**

On 8 August 2020, Germany adopted a coal phase-out Act²⁷ aiming to end coal-powered electricity generation in Germany by 2038. The act seeks to reduce emissions and ensure a safe, cost-effective, efficient, and climate-compatible energy supply.²⁸ It prohibits the operation of new coal-fired plants after 14 August 2020, except for those granted licenses before 29 January 2020. The Act also provides financial compensation to coal-fired plant operators and revises the German Renewable Energy Sources Act to enshrine the objective of increasing the proportion of renewables to 65% by 2030.²⁹

The German government then adopted laws for specific regions which accelerated the exit to 2030 on a region-by-region basis.³⁰

The publicly owned Swiss electricity company Azienda Elettrica Ticinese (AET)³¹ sued Germany on 20 October 2023 over the impact of its coal phase-out on the Trianel Lünen coal power plant, in which it has a 15% stake,³² which is scheduled to be shut down in 2032.³³ AET's claim is based on the fact that the plant's early closure was carried out without compensation. The precise amount of damages sought by AET has not been disclosed.³⁴

- **Lansdowne Oil & Gas v Ireland³⁵**

In June 2023, UK-based Lansdowne Oil & Gas, headquartered in Dublin, announced its intention to initiate proceedings against Ireland under the ECT.³⁶ The potential³⁷ claim concerns the Irish government's refusal in May 2023 to grant a lease to develop the Barryroe offshore oil and gas field in the North Sea Celtic Basin, where Lansdowne held a 20% interest.³⁸ Lansdowne asserts that it had already invested US\$20 million into the project.

²⁶ Case registered on October 20, 2023 <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/47>

²⁷ See the Act to Reduce and End Coal-Fired Power Generation (*Gesetz zur Reduzierung und zur Beendigung der Kohleverstromung*), 8 August 2020.

²⁸ Library of Congress, "[Germany: Law on Phasing-Out Coal-Powered Energy by 2038 Enters into Force](#)", 31 August 2020.

²⁹ For more information about the content of the Coal Phase-Out Act, see *ibid.*

³⁰ See Reuters, "[Germany's cabinet approves accelerated coal exit by 2030 in western state](#)", 2 November 2022.

³¹ AET is a utility company owned by the government of Ticino in Switzerland

³² AET has a 15% stake in the Trianel hard coal power plant in Lünen, North Rhine-Westphalia, with other shareholders being 27 municipal utilities.

³³ See local press: "[Energiezukunft, RWE zieht Klage gegen Kohleausstieg der Niederlande zurück](#)", 3 November 2023.

³⁴ According to the environmental organisation Power Shift, by taking legal action before arbitral tribunals, AET is attempting to undermine democratically taken decisions and impose the costs of the energy transition on the general public (V. Fischer, "[Pressemitteilung zu zwei neuen Energiecharta-Klagen](#)", *Power Shift*, 1 November 2023).

³⁵ Case not registered yet

³⁶ London Stock Exchange, [Update on Energy Charter Treaty Claim](#), 26 February, 2024.

³⁷ The Company has instructed counsel as it prepares to file an investment treaty claim against Ireland. See T. Fisher, "[UK oil company instructs counsel for claim against Ireland](#)", *Global Arbitration Review*, 26 February 2024.

³⁸ *Ibid.*

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

The company alleges that its efforts to develop the field have been hindered by Ireland's "*blinkered approach*" to energy security, which it suggests is "*driven entirely by environmental dogma*",³⁹ fuelling the argument that the ECT is used to counter environmental policies. However, Ireland's environmental ministry states that the refusal to grant the lease was based on the "*financial capability*" of the applicants, rather than public policy concerns regarding energy security or fossil fuels phase-out.⁴⁰

In the view of Lansdowne Oil & Gas, the Irish government has failed to act in a fair and equitable manner under Irish and international law towards the Barryroe partners.⁴¹

• Klesch v Denmark, Germany, European Union (ARB/23/48, ARB/23/49, ARB(AF)/23/1)⁴²

On 24 October 2023, UK-based oil refiner Klesch, along with its subsidiaries based in Denmark and Germany, initiated three investment treaty arbitrations under the ECT against Denmark,⁴³ Germany⁴⁴ and the EU.⁴⁵ Information about the claims made by the Klesch Group is limited⁴⁶ but they concern two investments by Klesch in oil refineries in Germany and Denmark, which it claims collectively generate approximately €4.5 billion annually.⁴⁷

In October 2022, the EU Council voted Regulation 2022/1854⁴⁸ on an emergency intervention to address rising energy prices after Russia's invasion of Ukraine. This Regulation contains measures aimed at (i) reducing electricity consumption; (ii) introducing price caps on certain energy producers; and (iii) introducing a windfall profit tax on company with profits exceeding 20% above the 2018-2021 average (i.e. a "solidarity contribution" of 33% on excess revenue generated from oil, gas, coal, and refinery activities). A European Commission spokesperson said the windfall measure was introduced "*to redistribute the energy sector's surplus revenues and profits to households and businesses to mitigate the effects of rising energy prices*".⁴⁹

In this context, according to a leaked EU trade policy committee experts document (classified as "*sensitive*" and marked for "*distribution on a need to know basis*"), Klesch is challenging the energy windfall tax introduced by the EU on the basis of the ECT.⁵⁰ This was also confirmed to Global Arbitration Review by a European Commission spokesperson.⁵¹ According to this document, Klesch

³⁹ London Stock Exchange, [New Year outlook and Energy Security Commentary](#), 8 January 2024.

⁴⁰ T. Fisher, "UK oil company instructs counsel for claim against Ireland", above note 39.

⁴¹ [Press Release](#) of Lansdowne Oil & Gas plc on Intent to Resort to Arbitration and Appointment of Legal Counsel, 22 May 2023. See also J. Ballantyne, "[Ireland faces first-ever treaty claim](#)", *Global Arbitration Review*, 22 May 2023.

⁴² Cases registered on October 24, 2023, <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/48> ; [https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB\(AF\)/23/1](https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/23/1)

⁴³ *Klesch v Denmark*, ICSID Case No. ARB/23/48.

⁴⁴ *Klesch v Germany*, ICSID Case No. ARB/23/49

⁴⁵ *Klesch v EU*, ICSID Case No. ARB(AF)/23/1.

⁴⁶ T. Fisher, "[Investor files trio of claims against EU, Denmark and Germany](#)", *Global Arbitration Review*, 25 October 2023.

⁴⁷ *Ibid.*

⁴⁸ [Council Regulation \(EU\) 2022/1854](#) of 6 October 2022 on an emergency intervention to address high energy prices.

⁴⁹ EUR-Lex, [Emergency intervention to address high energy prices](#), 20 October 2022.

⁵⁰ A. Neslen, "[Germany and Denmark sued by oil firm over windfall tax](#)", *The Guardian*, 20 November 2023.

⁵¹ T. Fisher "Investor files trio of claims against EU, Denmark and Germany", above note 47.

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

claimed that the EU had “used the Russian war of aggression against Ukraine and the high electricity prices during 2022 as a pretext to constrain the competitiveness of fossil fuel companies”.⁵²

Hence, Klesch is suing Germany⁵³ and Denmark⁵⁴ for €95m after they implemented the windfall profit tax contemplated in Regulation 2022/1854 (i.e. after they set their utility levies at 33% for profits above the 20% average). It is also suing the European Union for an undisclosed sum over the windfall tax regulation.

- **Towra v Slovenia (ARB/22/33)⁵⁵**

In a case registered on 5 December 2022, Luxembourg-registered mining company Towra SA-SPF filed a claim against Slovenia under the ECT. The claim concerns Towra’s minority investment in Premogovnik Velenje, which operates the Velenje coal mine in northeastern Slovenia. Premogovnik is entirely owned by state-owned power group Holding Slovenske Elektrarne.⁵⁶

Towra alleges that Slovenia devalued its investment in Premogovnik by enacting legislation that forced the mine to operate at a loss, purportedly to subsidize another state-run project. Towra further alleges that Premogovnik’s state-owned majority shareholder opted to sell coal from the mine below market price. Additionally, Towra asserts that the State unlawfully manipulated Premogovnik’s structure to nullify its shareholder rights and has cited statements allegedly made by Slovenian authorities suggesting the investment is worthless.⁵⁷

Towra is seeking at least €60 million in damages for alleged breaches of fair and impartial treatment (Article 10 of the ECT) and expropriation (Article 13 of the ECT).⁵⁸

Some experts have drawn a correlation between the case and Slovenia’s climate policy⁵⁹, as the government plans to reduce coal consumption by 30% by 2030.⁶⁰ The strategy envisages the closure of the Velenje coal mine and a social and economic restructuring of coal mining regions.⁶¹ Slovenia

⁵² A. Neslen, “Germany and Denmark sued by oil firm over windfall tax”, above note 51.

⁵³ Germany’s government explained that the solidarity contribution would be levied for the 2022 and 2023 tax years. The tax rate is set at 33% of all profits for the years 2022 and 2023 that exceed by over 20% the average profits made between 2018 and 2021. See the [press release](#) (in German) and the [law](#) (in German). See also K. Nicolay et al., [The effectiveness and distributional consequences of excess profit taxes or windfall taxes in light of the Commission’s recommendation to Member States](#), publication for the Subcommittee on tax matters, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, March 2023.

⁵⁴ According the abovementioned (note 50) Report from the EU Parliament on the implementation of Regulation 2022/1854, Denmark has adopted a 33% windfall profit tax, albeit only for the year 2023.

⁵⁵ Case registered on December 5, 2022 <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/22/33>

⁵⁶ T. Fisher, “[Mining company brings ECT claim against Slovenia](#)”, *Global Arbitration Review*, 6 December 2022.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* See also Global legal insights, Slovenia - [International Arbitration Laws and Regulations 2024](#).

⁵⁹ E. Hinrichsen, “Reconciling International Climate Law and the Energy Charter Treaty through the Use of Integrative Interpretation” (2024) 13(2) *Laws* 24, 34.

⁶⁰ [Integrated National Energy and Climate Plan of the Republic of Slovenia](#), 27 February 2020.

⁶¹ See News, “[Slovenia’s Velenje coal mine operator seeks extension of concession deal](#)”, 24 January 2023.

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

also plans to phase out coal by 2033.⁶² The ECT case was initiated without delay following this announcement.

- **Ascent Resources v Slovenia (ARB/22/21)**⁶³

In May 2022, the UK-based energy company Ascent Resources initiated proceedings under the ECT and the UK-Slovenia bilateral investment treaty (“BIT”) against Slovenia⁶⁴ over an investment dispute involving an oil and gas field.

Ascent Resources, operator of the field, owns a 75% stake in the project, while the Geoenergo holding the remaining share. The project included two gas wells, Pg-10 and Pg-11A, from which untreated gas has been extracted and sold to Croatian oil company INA.⁶⁵

After requesting permission in 2017 to enhance production with low-volume hydraulic stimulation, Ascent Resources was denied a permit to boost productivity at its two natural gas wells without an Environmental Impact Assessment (EIA). Ascent claims that this decision contravened the opinions of Slovenia’s other government authorities and hindered field development, resulting in a notable decline in gas production and revenue.⁶⁶

Furthermore, on 6 April 2022, Slovenia’s Parliament amended Slovenia’s Mining Law to ban all forms of hydraulic fracturing (fracking) for hydrocarbons.⁶⁷ According to Ascent, this ban was targeted at the company and has unfairly prevented the company from developing the field.⁶⁸

Consequently, Ascent initiated a claim against Slovenia for requiring an EIA for the company’s gas project involving low-volume hydraulic fracturing and the subsequent implementation of a hydraulic fracking ban. The company alleges that Slovenia unlawfully expropriated its investment in the Petišovci oil and gas field, violating Article 5 of the UK-Slovenia BIT, Article 13 of the ECT,⁶⁹ and other treaties provisions.⁷⁰

⁶² Euractiv, “[Slovenia to exit coal by 2033](#)”, 14 January 2022; SeeNews, “[Slovenia to complete coal phase-out by 2033 – govt minister](#)”, 14 September 2021. See also European Parliament’s [briefing](#) on Climate action in Slovenia, November 2021.

⁶³ Case registered on September 1, 2022, <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/22/21>

⁶⁴ *Ascent Resources Plc. and Ascent Slovenia Ltd. v Republic of Slovenia*, ICSID Case No. ARB/22/21, [Notice of Dispute](#), 5 May 2022.

⁶⁵ C. Sanderson, “[UK energy company puts Slovenia on notice](#)”, *Global Arbitration Review*, 24 July 2020.

⁶⁶ C. Sanderson, “[Claim against Slovenia over fracking ban gets underway](#)”, *Global Arbitration Review*, 16 August 2022.

⁶⁷ A 2022 Mining law amendment imposed a ban on hydraulic fracking. See Euractiv, “[Slovenia imposes blanket ban on fracking](#)”, 7 April 2022.

⁶⁸ T. Fisher, “[Slovenia denied security in fracking case](#)”, *Global Arbitration Review*, 23 February 2024.

⁶⁹ See [Press Release of Ascent Resources Plc on Arbitration Initiation and Revised Damages Estimate](#), 15 August 2022.

⁷⁰ Ascent claims that Slovenia’s actions violate the fair and equitable treatment standards of the ECT and BIT, as well as their provisions regarding the state’s obligations not to arbitrarily, unreasonably, or discriminatorily impair investments (Article 2(2) of the BIT and Article 10(1) of the ECT). See C. Sanderson, “[UK energy company prepares claim against Slovenia](#)”, *Global Arbitration Review*, 22 March 2021. See also *Ascent Resources Plc. and Ascent Slovenia Ltd. v Republic of Slovenia*, Notice of Dispute, above note 21.

Recent fossil fuel arbitration claims based on the ECT: the urgency of neutralizing the sunset clause

Ascent claims its low-volume hydraulic stimulation process, distinct from high-volume fracking, has been used at the field for decades without environmental issues.⁷¹ Upon investing in the field in the early 2000s, the company asserts it legitimately expected to be able to carry on with this process. Ascent alleges that the ban prevents it from conducting low volume hydraulic stimulation of the wells to enable gas production from the Petisovci Gas Field, thus depriving Ascent of the value of its investment in Slovenia.⁷²

The company is seeking over €656.5 million in damages.

The *Ascent v Slovenia* dispute holds climate relevance due to the adverse effects on the environment caused by hydraulic fracturing (fracking)⁷³ and especially GHG emissions (such as methane) associated with hydraulic stimulation.⁷⁴

Friends of the Earth Slovenia has described Ascent's claim as "*unacceptable*", citing it as an example of companies leveraging the ECT "*to extort governments and demand special treatment*".⁷⁵

- **Clara Petroleum Ltd v Romania (ARB/22/10)**⁷⁶

UK-based petroleum company Clara Petroleum Ltd filed a claim against Romania on 1 April 2022 under the ECT regarding investments in hydrocarbons exploration and production.⁷⁷

The precise nature of the dispute and the quantum remain confidential. However, the firm representing Romania, states that the claim concerns measures taken by Romania in the oil and gas sector.⁷⁸ Indeed, in 2011, Clara Petroleum was granted a concession agreement for oil exploration, development and exploitation in the EX-TULCA area, in western Romania. This area has been a focal point for local protests against hydraulic fracturing.⁷⁹ Local protesters have warned of the environmental risks associated with this process. Most notably, they fear that the groundwater would be significantly impacted by shale gas extraction.⁸⁰

⁷¹ *Ascent Resources Plc. and Ascent Slovenia Ltd. v Republic of Slovenia*, Notice of Dispute, above note 21.

⁷² *Ibid.*

⁷³ Yale School of Public Health, "[Integrated effort needed to mitigate fracking while protecting both humans and the environment](#)", 30 March 2022.

⁷⁴ E. Hinrichsen, above note 20.

⁷⁵ Friends of the Earth Europe, "[Energy Charter Treaty claim pushes Slovenia to weaken fracking rules](#)", 17 January 2022.

⁷⁶ Case registered on April 1, 2022, <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/22/10>

⁷⁷ UN Trade & Development – Investment policy hub, *Clara Petroleum v Romania*. See also United Nations Special Rapporteur on human rights and the environment, *Examples of ISDS Claims Launched in Response to Climate Actions*, 10 July 2023, [Annex 2 to A/78/168](#).

⁷⁸ Law firm Dechamps International Law's [website](#).

⁷⁹ See for instance: <https://www.agerpres.ro/social/2014/01/12/bihor-motii-din-campeni-solidari-cu-localnicii-din-tulca-impotriva-gazelor-de-sist-20-43-37> and <https://www.ebihoreanul.ro/stiri/liber-la-gaze-pe-tacute-guvernul-a-dat-liber-la-exploatarea-gazelor-de-sist-in-bihor-105934.html>.

⁸⁰ *Ibid.*

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