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THE MODERNIZATION OF THE ENERGY CHARTER TREATY: LEGAL REFORMS, CLIMATE ALIGNMENT, AND CHALLENGES TO INVESTOR-STATE ARBITRATION

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ABSTRACT

After 15 years of discussions, the Energy Charter Treaty (ECT) was modernized on the 3rd of December, 2024, and among the many reforms introduced are the ones that are intended to align investment protection with global climate commitments. The amendments which have taken effect provisionally from the 3rd of September, 2025, do not include ISDS protection for fossil fuel investments in the EU, the UK, and Switzerland, while a 10-year transition to protection for projects before 2025 has been granted. The new Flexibility Mechanism and Annex NI allow the contracting parties to unilaterally cut off particular fossil activities, thus speeding up the transition to green energy resources and renewable energy sources. The newly introduced provisions such as Article 19 bis and the clarified indirect expropriation rules affirm the authority of the Regulations of Sovereign Rights and the protection granted non-discriminatory climate actions from claims of investors, leading to an improvement in regulatory chill scenario. The treaty further extends its coverage to a whole range of clean energy technologies including green hydrogen, energy storage and the included dispute resolution process, refined with increased transparency, dismissal of frivolous claims, and disclosure of third-party funding. The anti-abuse clauses put in place control for provisions relating to treaty shopping. However, the 20-year sunset clause that remains is still to be considered a risk factor for post-withdrawal cases. The aforementioned developments have not covered the entire scope of such provisions and initiatives as there are still fossil protections outside the EU, which are one of the points delaying ratification. The ongoing state withdrawal and all the drawbacks still shine through. This research holds the hypothesis that the treaty's modernization under the ECT is a significant initiative but is not yet substantial enough towards the alignment of investor's rights with the decarbonization imperatives dictated by the Paris Agreement and the UNFCCC.

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INTRODUCTION

The Energy Charter Conference on the third day of December approved one of the most significant reforms that has ever been made to the ECT during its 35th annual meeting. The reform, a result of an arduous series of more than six years and 15 years of negotiations led to the exclusion of the protection of fossil fuel investments in the EU, UK, and Switzerland.[1] The core idea of this reform and modernization is to strike a critical balance between investment protection and sustainable development goals as per the global climate commitments. The ECT has been described as one of the most dangerous investment treaties to the energy transition. The reason for this being the protection provided by it to over 300 megatonnes of greenhouse gas emissions. The most recent report provides that global fossil fuel assets, protected by ISDS, emit around 2 gigatonnes of GHG emissions on an annual basis. In this context, 2025 emerges to be a critical year for climate action with the essential climate agenda being the investment treaty reforms.[2]

Under the new framework, the range of fossil fuel investments including coal, petroleum gases, high carbon hydrogen and other synthetic fuels included in investment plans made prior to September 3, 2025 will continue to be protected for a transitional period but would tend to be phased out ten years after the amendments enter into their provisional effect.[3] The reform, objectively, focuses on the sovereign right of the states to regulate legitimate public policy objectives including environmental protection, climate change mitigation and adaptation, public health, morality, and safety.[4] To reduce the risk of regulatory chill, non- discriminatory measures aimed at environmental protection are explicitly excluded from constituting indirect expropriation claims, except for some specific cases. The provision provides states with a greater policy space to enact ambitious climate actions without the threat of potential and disruptive investor-state disputes.[5] The treaty has been a constant stage for facing major criticism as one of the major obstacles to energy transition as it advances to protect the

[1] Energy Charter Secretariat, 'Decision CCDEC 2024 12 GEN' (3 December 2024) available at https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/CCDEC202412_EN.pdf accessed 29 October 2025.
[2] E3G, 'The Energy Charter Treaty Remains the Most Dangerous Investment Treaty to the Energy Transition' (2024)
[3] The date for future reference is considered as December 31, 2040
[4] Elena Cocciolo, 'A Critical Review of the Energy Charter Treaty from an Earth System Law Perspective' (2025) 14 Journal of World Energy Law & Business 363
[5] Gibson Dunn, 'Modernised Energy Charter Treaty Has Finally Been Approved' (30 December 2024), https://www.gibsondunn.com/modernised-energy-charter-treaty-has-finally-been-approved/ accessed 29 October 2025.

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responsible investments for billions of tons of annual GHGs under the ISDS mechanism. To support this critical viewpoint, what stands as an important factor is that ECT enables transnational fossil fuel corporations to sue governments in the selected international tribunals for the losses resulting from such policies, leading to the chilling effect on climate legislation due to costly arbitration and compensation claims. It tends to protect fossil fuel investments that are tied to a specific limit of annual emissions, as discussed earlier. A number of EU countries including those like France, UK, Germany, and Italy have publicized the plans to exit the treaty due to its incompatible nature with various climate and sustainable development goals, eventually affecting the terms of the Paris Agreement.[6]

FLEXIBILITY MECHANISMS AND ANNEX NI REFORMS

As a key part of the 2024-2025 modernization efforts and reforms aimed at the reconciliation of investment protections with climate policy goals and aspirations, the flexibility mechanism and phased out fossil fuel exclusions in Annex NI stand as substantial segments. The "Flexibility Mechanism" allows contracting parties to unilaterally list specific fossil fuel investments in a separate and specially created Annex NI (Non-Included Activities). Investments contained herein are not treated as an economic activity in the energy sector for the purposes included in Part III of the treaty in context. This excludes the same from ISDS protection subsequently. A direct impact of this could be seen on investments in such fuels and countries switching to more sustainable energy sources and renewable options in consonance with the idea of international climate policies and agreements.[7]

The modernization comes with a ratification process requiring three-fourths of the parties to deposit their instruments of ratification. The process itself takes several years due to various reasons including the differing of national interests and political positions. The modernized ECT has started to apply from September 3, 2025 unless and until a party opts out earlier. Reservations and withdrawals have been presented by the EU states and the parliament. Critics tend to argue that the reform insufficiently addresses the climate imperatives and that ISDS continues to limit the state's regulatory freedom to adopt the climate energy policies towards

[6] International Institute for Sustainable Development (IISD), 'Why the Energy Charter Treaty Modernization Doesn't Deliver for Climate' (11 December 2024) https://www.iisd.org/articles/explainer/modernized-ect-doesnt-deliver-for-climate accessed 29 October 2025.

[7] Gleiss Lutz, 'Energy Charter Treaty modernisation adopted' (12 December 2024) https://www.gleisslutz.com/en/news-events/know-how/energy-charter-treaty-modernisation-adopted accessed 31 October 2025.

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sustainable development. A complex transitional period is thus important wherein the investor protection, state's regulatory autonomy and the climate goals are delicately balanced.

One of the contemporary examples in this context is the dispute named, RWE v. Netherlands, wherein the ECT has enabled the related fossil fuel investors to challenge various national climate measures in international arbitration cases.[8] The case highlighted and focused on how companies can use the ECT's ISDS mechanism to technically and indirectly bypass national courts and seek compensation through arbitration mechanisms. In response, the Dutch government and the associated environmental groups argued that the coal phase-out measures carried out were necessary for compliance with the Paris Agreement and the state possesses and retains the right to regulate for climate actions. In 2023, the German Federal Court of Justice and the earlier involved Dutch courts ruled that such ECT based arbitrations were deemed to be inadmissible as per the principle of autonomy under the EU law and the prior precedents by the European Court of Justice. The RWE discontinued its claim against the Netherlands subsequently but the case remains a powerful illustration of the kinds of conflicts between climate action and investor protections under the ECT. The "sunset clause" which extended investment protections for years after the treaty case also affected the outcome in several ways. The case ultimately demonstrated the deterrent effect of the ECT's protections and remains central to discussions and debates related to policy reforms and climate carve-outs.[9]

TREATY SHOPPING AND THE SUNSET CLAUSE

A related approach to the protection of the prior rights granted such that they are not abused due to the notion of restructuring applied here is the practice of treaty shopping. The investors tend to restructure their corporate entities, through intermediary jurisdictions to qualify for more favorable protections under various bilateral/multilateral treaties. The same is considered legitimate if the restructuring is done without abusing the rights and the critical test for it aligns with the timing and intent of restructuring being bona fide inherently.[10] A leading authority is Mobil and others vs. Venezuela, wherein the International Centre for Settlement of Investment

[8] RWE AG and RWE Eemshaven Holding II BV v Kingdom of the Netherlands (ICSID Case No ARB/21/4).
[9] Climate Case Chart, 'RWE v. the Netherlands' (Climate Change Litigation Database, 15 October 2024), https://climatecasechart.com/non-us-case/rwe-v-kingdom-of-the-netherlands/ accessed 31 October 2025.
[10] O. Susler, 'Treaty Shopping by Dual Nationals Through the Use of Interposed Corporate Entities' (Kluwer Arbitration Blog, 2 September 2015) https://legalblogs.wolterskluwer.com/arbitration-blog/treaty-shopping-by-dual-nationals-through-the-use-of-interposed-corporate-entities/ accessed 31 October 2025.

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Disputes clearly stated that restructuring to access treaty protections is legitimate only when it is done prior to any known dispute, otherwise it could be rejected due to logical reasons.[11] For this reason, anti-abuse principles and denial of benefits clauses in various treaties seek to prevent the related misuse. To support this contention, in Gustav FW Homester, the arbitral tribunal clearly refused to provide treaty protection to a party when it found that the restructuring was done in the violation of the international principles of good faith.[12] Treaty shopping of the wrong kind is thus prohibited by legal international standards. To put a check on such misuse, 'denial of benefit clauses' are thus, incorporated in the treaty concerned to act as a counterpoise, authorizing the host states to prescribe the treaty benefits to someone who fails to have a direct and effective economic connection with the purported host state.

A significant role is played by Article 47(3) of the Energy Charter Treaty.[13] It provides for the investment protections under the treaty to continue to apply for 20 years after a state withdraws from the treaty covering the investments made prior to the withdrawal mechanism by the countries. There is a concept of extended protection even after withdrawal happens. The sunset clause obligates the states to honor the treaty protections for the existing investments for a time period of two more years. The investors, can thus, initiate ISDS claims for those related to investments made before the established period. The regulatory chill effect is thus, derived from this. Moreover, the clause leads to states to seek alignment of their laws with the Paris Agreement goals as investors tend to retain the powerful tools to challenge regulatory reforms that tend to impact the nature of fossil fuel investments, undermining the decarbonization efforts.[14] The sunset clause has had several political and legal responses, leading to several EU countries to coordinate withdrawals while seeking to negotiate measures to mitigate the sunset-related risks. The clause, has thus, been described as being incompatible with the climate ambitions of the European Union. The European Parliament and the European Commission have actively sought to disapply the sunset clause in question to thereby prevent the fossil fuel investors from challenging green policies. This involves inter-se agreements with third-party states to nullify the effects of the clause, ensuring that future disputes related to fossil-fuel investments could not be initiated. Investor-state arbitration between EU investors and the

[11] Mobil Corporation, Mobil Cerro Negro Holding, Ltd, Mobil Venezolana de Petróleos Holdings, Inc, Mobil Cerro Negro, Ltd, Mobil Venezolana de Petróleos, Inc v Bolivarian Republic of Venezuela (ICSID Case No ARB/07/27) Decision on Jurisdiction (10 June 2010).
[12] Gustav F W Hamester GmbH & Co KG v Republic of Ghana (ICSID Case No ARB/07/24).
[13] Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998) art 47(3).
[14] *Id.*

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member states, reinforcing the reliance on domestic courts or other dispute resolution mechanisms. The amendments also clarify that non-discriminatory climate policies do not amount to any kind of indirect exploitation, except in specific and rare cases. States thus, have been granted a broader policy space to introduce their climate measures without triggering any ISDS claims. The reforms stand apart as a major step towards the alignment of investment treaty laws with climate goals, leading to a certainty for green revolution.[15]

SOVEREIGN RIGHTS OF THE STATE

The modernized version of the Energy Charter Treaty has introduced a significant and standalone provision referenced as Article 19 bis, which tends to explicitly reaffirm contracting parties the sovereign right to regulate within their defined and specific territories to achieve a proper and defined range of policy objectives defined earlier.[16] The article recognizes that the states tend to maintain full sovereignty over their concerned environmental and climate policies. This holds a strong ground for good-faith environmental regulations from being associated with indirect exploitation under the investment protection rules, unless the measures are deemed to be manifestly excessive or arbitrary. The aim is to reduce the effect of regulatory chill and providing certainty in terms of legal provisions for the states which wish to enact their ambitious climate legislations, with respect to various agreements, such as the Paris Agreement to mention one. Commitments such as the UNFCCC, which stands for the United Nations Framework Convention on Climate Change, are thus tied to such reforms. The objectives and goals defined therein are connected to such reforms and embed in themselves climate change considerations as the core framework of the treaty regulations and norms. Responsible business conduct is encouraged as the amendment tends to encourage investors within the contracting parties' jurisdiction to adopt conduct practices originally aligned with internationally recognized standards including the UN Guiding Principles on Business and Human Rights. A legal safeguard is thus established and the state's regulatory autonomy is thus, enhanced without the negation of investors' rights contained.[17] The article marks a pivotal role in transforming ECT's legal framework and aligns investment protection with critical climate

[15] IISD, "Why Coordinated Withdrawal From the Energy Charter Treaty Remains Essential for Effective Climate Action" (29 June 2025) https://www.iisd.org/articles/insight/coordinated-energy-charter-treaty-withdrawal-essential accessed 31 October 2025.
[16] Energy Charter Treaty, 'Article 19 bis: Climate Change and Clean Energy Transition' (2024) https://www.energychartertreaty.org/fileadmin/DocumentsMedia/CCDECS/2024/CCDEC202412_EN.pdf accessed 31 October 2025.
[17] WilmerHale, 'The Modernised Energy Charter Treaty: Key Takeaways from the Amended Text' (22 December 2024) https://www.wilmerhale.com/en/insights/blogs/international-arbitration-legal-developments/20241223-the-modernised-energy-charter-treaty-key-takeaways-from-the-amended-text accessed 31 October 2025.

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sovereignty rights. The provision, anchors climate consideration into the heart of several treaty obligations and helps to reconcile investor protections with urgent and practical global sustainability goals.

Apart from the established scenario, the modernization of ECT has broadened the investment protections granted to encompass technologies pivotal for energy transition, signaling an even greater shift in the focus towards supporting green energy and international agreements that support the same. Focus is also laid on traditional norms in the energy sector while continuing towards a modernized, technological, and innovative approach. While this has happened, definitions of protected investments and investor conduct expectations have been refined.

DISPUTE MECHANISMS UNDER ECT

There have been notable ECT arbitration cases that properly illustrate the process treaty provisions are played out in practice. The Yukos case against Russia represents the largest and the most significant set of claims in this regard. Yukos, being one of the largest oil companies was dismantled by the Russian government through several criminal prosecutions, tax reassessments, and forced auctions, so to say. The company's main shareholders, alleged violations of the ECT on the basis of expropriation and the denial of a fair and equitable treatment, leading to multiple arbitration claims. The UNCITRAL Arbitration Rules were involved and the proceedings were also administered by the Permanent Court of Arbitration in the Hague. The tribunals eventually found that Russia's actions against Yukos were politically motivated rather than being those arising from legitimate concern. This led to a breach of the ECT, involving the notion of Article 13 concerned with expropriation.[18] The case led to an extensive debate on the issue whether ECT provisions disproportionately tend to shield investors against legitimate state actions, including politically sensitive notions such as resource nationalization and anti-corruption notions relating to enforcement.

The ECT focuses on a tailor-made system for the resolution of a wide range of disputes which reflect the complex nature of energy investments and policies. A balance is thus maintained between the protection of investors' interests and state sovereignty. Article 26 of the Investor-State Dispute Settlement specifically allows investors to brig claims against the contracting states in cases of treaty violations including the denial of fair and equitable treatment or specific

[18] Yukos Universal Limited (Isle of Man) v The Russian Federation (PCA Case No AA 227).

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breaches of the treaty.[19] The scope of claims includes the investors initiating arbitration proceedings against the host states when they allege violations of treaty obligations as per the investment policies and practices. Article 26, in this context, provides that the disputes can be submitted under certain rules constituting the ICSID Convention or Additional Facilities Rules, UNCITRAL ad hoc rules, and the Rules of the Stockholm Chamber of Commerce. An amicable settlement is encouraged at first through a 3-month consultation period for the resolution of disputes before resorting to proper arbitration practices. Non-observance as a procedural consideration is considered at times by the tribunals in question. The modernized ECT reforms focus on improving the transparency with the distinguished UNCITRAL Transparency rules. This in turn, allows for the dismissal of frivolous claims, enhancing provisions for security and efficiency. Disclosure of third-party litigation funding allows for fairness to stand on substantial grounds in the procedural mechanisms and approaches.[20]

Regarding the mechanism for the state-to-state dispute resolution including the parties focusing on the interpretation of the treaty itself, Article 27 comes into the picture. An important factor to consider here is that it excludes competition and environmental disputes which tend to have separate and precise procedures. Article 27, though allows for the resolution of disputes through consultations and negotiations but also allows arbitration as a second resort if an amicable solution is not in sight.[21] A specific tiered dispute procedure for sustainable development and environmental disputes that emphasize on diplomacy and conciliation apart from arbitration, which in turn promotes collaborative conflict resolution for issues related to climate. In terms of the specialized dispute mechanisms, the ECT includes specific mechanisms for disputes relating to transit, trade, and competition to cater to the needs of the energy sector's distinct and unique challenges. For instance, transit disputes are subject to separate conciliation mechanisms that aim for a faster solution and a less formal resolution, which is included under Article 7.7 of the same.[22] In 2015, the conciliation roster and procedures under the Energy Charter Treaty were designed to include a roster of qualified conciliators. A limit of up to three candidates were allowed to be included in the list to facilitate efficient dispute settlement and

[19] Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998) art 26.
[20] Energy Charter Treaty, 'Article 26: Settlement of Disputes between an Investor and a Contracting Party' (2013) https://www.energychartertreaty.org/provisions/article-26-settlement-of-disputes-between-an-investor-and-a-contracting-party/ accessed 31 October 2025.
[21] Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998) art 27.
[22] Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998) art 7.

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resolution.[23]

Disputes relating to environmental issues are considered under a special mechanism reviewed by the Charter Conference that emphasizes on diplomatic resolution to a considerable degree. The conference seeks to evaluate the existing international for a to ascertain whether or not these are appropriate for the resolution of a particular dispute and decides the pathway for the same. In the broader context, the dispute resolution framework emphasizes on the growing recognition of various environmental and climate issues as critical to energy concerns and governance. A need to balance the treaty obligations along with the necessity to uphold the integrity of public policy objectives reflecting environmental protection and the provisions under UNFCC and the Paris Agreement, incorporated in the modernized ECT reforms. For specialized resolution of environmental disputes, consultations and secretarial support are facilitated in the form of environmental panels particularly tasked with conflict resolution for such disputes. Diplomatic and conciliatory approaches are focused through review and facilitatory approaches by the Energy Charter Conference and the Secretariat. International treaty obligations and climate policies focusing on sustainable development and climate protection are thus, respected and enforced through such logical approaches.[24]

BROADER INVESTMENT SCOPES

This process of modernization and reform has led to the ECT protections to encompass and focus more on renewable energy technologies including its various segments. Energy storage technologies including batteries, green hydrogen production, and biomass which are deemed to be essential for deep decarbonization and for the effective enforcement of climate policy commitments. A deliberate and impactful policy shift is thus seen towards fostering and developing investments in the infrastructure related to a successful energy transition.

By defining ‘Economic Activities in the Energy Sector’ more accurately and distinctively, the treaty focuses on the changing investment climate and the energy practices globally. As a result, investor confidence is increased in reference to clean technologies by providing a divergent investment forum and climate and changing energy priorities, in the global scenario. Protections against unfair or arbitrary state regulations as per treaty norms catalyzes the

[23] Energy Charter Conference, Decision of 21 October 2015, CCDEC 2015 11, Amendments to the Rules Concerning the Conduct of Conciliation of Transit Disputes.
[24] Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998) art 19(2)-(3).

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financing needed for a structure clean-energy deployment and the concerned shift. Article 1(5) of the ECT describes 'Economic Activities in the Energy Sector' to include the exploration, extraction, refining, production, storage, transmission, trade, marketing, sale of products excluding those in Annex NI.[25] In the global scenario, there is a certain degree of political push towards the areas of clean energy and to finance renewable energy technologies. Under the new reforms relating to the investment treaty provisions, there is creation of confidence by the limitation of arbitrary and regulatory changes that tend to harm, investments in the concerned sector. But still, there is a degree of political tension that arises from fossil fuel phase-out policies that are challenged under the treaty by the investors who claim protection for their investments in the form of various judicial precedents.[26] The new and emerging aspect of the broadening of horizons of definitions such as that mentioned earlier reflect the evolving global energy priorities and investor expectations with regards to global climate commitments and sustainable development. Landmark cases such as Mohammad Ammar Al-Bahloul v. Republic of Tajikistan, Blusun S.A. v. Italian Republic, Energoalians TOB v. Republic of Moldova (UNCITRAL), Isolux Netherlands BV v. Kingdom of Spain, and Petrobart Limited v. Kyrgyz Republic reiterate the notion related to investment definitions under ECT. The jurisprudence focuses on strengthening the legal framework related to ECT's objective with the object of securing confidence and financing in the shifting global energy landscape in the context of clean energy transition projects.[27] In most of these cases, the tribunals have confirmed a broad and inclusive definition of the term investment. It has been explicitly stated that the definitions include the investments that are owned or controlled by the investor recognizing ownership structures that involve holding companies, including the non-signatory countries.

The treaty thus, takes into consideration indirect beneficial ownership and not just the nominal ownership of shares. The cases also shed light on protections under the ECT in regards to the legitimate expectations and fair treatment of renewable energy investments amid policy changes. The investments in energy projects qualify for the protection as long as they meet the ECT criteria mentioned including the ownership, control, and contribution to the economy in relation to the energy sector. Contractual rights arising from the projects relating to the energy sector qualify as the investments under the ECT. Stability and predictability are considered of

[25] Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998) art 1(5).
[26] IISD, "Overview of Recent Fossil Fuel Arbitration Cases Under ECT" (26 January 2025) https://www.iisd.org/itn/2025/01/27/overview-recent-fossil-fuel-arbitration-cases-under-energy-charter-treaty-clementine-baldon-rosanne-craveia/ accessed 31 October 2025.
[27] *Id.*

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importance in energy investments, eventually holding states accountable for the discriminatory and regulatory changes affecting the contractual rights. The decisions reinforce the role of the treaty in stabilizing the investment climate to support traditional energy projects amid the global norms and related reforms.

CRITICISM

The modernization of the Energy Charter Treaty represents a critical step in aligning the international energy investment frameworks with global climate policy goals. There have definitely been significant reforms which have been discussed in this paper, such as the phase-out of protections for fossil fuel investments in Annex NI and the related provisions for renewable energy technologies, and others. But there are still loopholes that affect the functioning and effectiveness of the treaty. Analysts from various climate advocacy groups such as the International Institute for Sustainable Development (IISD) point out that despite the carve-out mechanisms within the EU states, a majority of the contracting parties tend to continue offering fossil fuel investments protections and thereby, limiting the effect of the climate ambition with reference to IISD, 2024. There has also been a mention of controversial technologies such as CCS- fossil carbon capture and storage and fossil hydrogen and it has been argued that this could eventually prolong the dependence on fossil fuels rather than improving the condition and accelerating decarbonization.[28] The sunset clause allowing enforcement of the protections for a time period of 20 years after the withdrawal of a party, also poses certain challenges for the states that are ready to abandon the old treaty provisions and to set up and implement ambitious climate policies without being affected by any kind of investor claims. Besides that, the ratification process that is yet to come and the political will bifurcate among states create a sense of uncertainty regarding the complete realization and effect of the related modernization. Critics point out that although the modernized ECT does distinguish regulatory rights of states and offers distinguished flexibility mechanisms, the movements might be too modest and gradual to settle the long-standing disputes between the investor protection regimes and the imperatives of urgent climate action, to a definitive extent.[29] Hence, the treaty continues to be a controversial issue in regards to the trade-off between the protection of investments and the enabling of sovereign environmental regulation

[28] International Institute for Sustainable Development (IISD), 'Why the Energy Charter Treaty Modernization Doesn't Deliver for Climate' (11 December 2024) https://www.iisd.org/articles/explainer/modernized-ect-doesnt-deliver-for-climate accessed 31 October 2025.

[29] Voelkerrechtsblog, "The ECT's Long Road to Modernisation" (18 December 2024) https://voelkerrechtsblog.org/the-ects-long-road-to-modernisation/ accessed 31 October 2025.

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in the global transition to sustainable energy and the fulfilment of global policy considerations. The modernization process has brought about another important issue, that is, the uncertainty that has been magnified by the ongoing withdrawals or the threatened withdrawals of the key contracting parties that are answerable to the treaty obligations. During the years leading up to and during the reform process, EU states including Ireland, Denmark, and others have announced their decision to withdraw from the treaty on various grounds, one of them being that the ECT was incompatible with their urgent energy transition plans. The withdrawals are indicative of the treaty regime's limits of consensus and point out the fact that even reforms like the fossil fuel carve-outs are perceived as an improper and insufficient initiative for the risks associated with ISDS rights and the possibility of investors challenging the new climate policies by many jurisdictions.[30] Moreover, the ECT's effort to grant investors protection while introducing new climate ambitions has led to practical difficulties with implementation. The countries that have reformed the provisions are the ones that have ratified the amendments in a successful manner and the eventual entry into the force is dependent on three-fourths of the parties depositing their ratification instruments, which is expected to take multiple years ahead. Meanwhile, the older and less climate-friendly investor protections are still an inherent part of the treaty's constituency which is deemed to be quite large and even includes the non-EU nations such as Turkey and Switzerland who have already shown inclination and support towards various fossil fuel carve-out methods or who have not yet made commitments similar to those of the European Union.

CONCLUSION

The modernization of the ECT, approved on December 3, 2024 marks a pivotal shift in aligning the international investment law with demands of global climate policy commitments and global climate action. A result of more than 15 years of negotiations, the reforms exclude the protections for fossil fuel investments in key jurisdictions including the European Union, the United Kingdom, and Switzerland. This has led to a decisive policy shift aiming at fostering an accelerated clean energy transition. The amendments in context present a finely crafted equilibrium between the protection of investors and the sovereign regulation of states, especially regarding the implementation of climate policies, environmental conservation, matters of public health and safety. The Flexibility Mechanism and Annex NI are among the

[30] Nawsheen Maghooa, 'Withdrawal from the Energy Charter Treaty: The Ostrich Effect?' (2025) 41 Arbitration International 595-606.

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novel innovations that allow for a fully-fledged disinvestment in fossil fuels and the withdrawal of such investments from the treaty's scope. However, on the other hand, new provisions will have an indirect but a definite positive effect on the issue of regulatory chill by specifying that bona fide environmental regulations will not be treated as a kind of indirect expropriation. The new legal framework propels the treaty into a new era containing substantial investments in fossil fuels and the associated technologies will no longer be covered under the investment protection and dispute resolution mechanisms of the ECT. The reform, however, is not without its cons even after these major changes, as difficulties signal a universal trend of keeping fossil fuel investment protections by many contracting parties apart from the EU. There are ongoing disputes over such usage and the risk of the 20-year sunset clause extending investor protections well beyond the era of a state's withdrawal making it extremely challenging to bring on the climate legislation that would otherwise be considered bold, to an extent. Political dynamics further compound unfinished business, as several influential member states have pointed at withdrawn or threatened to do so due to perceived inadequacies in the reforms. The ratification process, though, remains protracted and uncertain. Consequently, the modernized ECT undeniably represents a landmark evolution in the international investment regime with sustainability considerations and state regulatory autonomy as its core.