

# What Is the Future of Energy Charter Treaty (ECT)?

## Publications

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The Energy Charter Treaty (ECT) is a multi-nation investment treaty which protects investors from the nationalization of assets and other arbitrary and discriminatory state conduct made at the expense of investments in the energy sector. Most importantly, it provides a means for investors to make claims against member states for breaches of their obligations through international arbitration. Until recent withdrawals, members included Japan, the EU and the European states, the UK, and the former Soviet states.

The ECT is perhaps best known in the context of the many (50+) arbitration claims made against Spain in recent years, including by Japanese investors. These claims came about due to Spanish legislation that was detrimental to renewable infrastructure investments. Essentially, the Spanish government reduced the tariffs paid to renewable projects for the electricity they produced, rendering many projects untenable. This example suggests that the ECT could be an important protection for investors in the coming years as huge investment is made into the energy and renewables sectors. With the ECT in place, investors will take comfort in knowing that governments cannot arbitrarily change the playing field.

However, despite the obvious benefits in supporting and therefore encouraging investment, many commentators see the treaty as having a chilling effect on regulation and as an obstacle to climate-friendly policymaking. They argue that the ECT restricts legislators tackling climate change. As a result, many European countries, frustrated at efforts to negotiate and update the treaty, have recently withdrawn, or indicated they intend to withdraw. This includes, most recently, the UK.

Sunset provisions in the treaty mean these withdrawals will not be effective for another 20 years. But the future of the treaty remains troubled and its relevance is diminishing. There is every chance the ECT will not exist in 20 years.

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