

Energy Charter Treaty: Threatening the Paris Agreement by Dr Tom Pettinger, University of Warwick

“It’s a real threat [to the Paris Agreement]. It’s the biggest threat I am aware of.”
([Yamina Saheb](#), former employee of the ECT secretariat)

The Energy Charter Treaty (ECT) is an international energy agreement signed in 1994 by 50+ countries, including EU Member States, drafted to protect and promote the interests of European energy companies as they began to invest in former Soviet republics. This eastward expansion meant that energy companies wanted reassurances that fair competition would exist between signatories. The ECT thus sought to protect against discrimination in energy affairs between countries and to encourage inward investment. However, it has also brought numerous significant problems, outlined in detail below. Yet, following Brexit, the UK [“will be \[re-\]ratifying”](#) the Treaty and even extending its reach to UK Dependencies rather than prioritising the UK’s sovereignty and own interests by renegotiating or withdrawing from it. **There are multiple reasons the UK should not re-ratify the ECT.**

First, [the ECT fails to establish investor responsibilities](#), and it has encouraged [energy corporations to sue governments](#) when they have enacted policies (especially green ones) that have compromised corporations’ theoretical future profits (which are often based on fossil fuels). There are 142 known cases which have cost governments billions in damages every year to settle.

Second, despite being an EU-centric Treaty, [“most disputes under the ECT have been intra-EU”](#). For example, in 2021 Germany’s UNIPER declared its intention to sue the Dutch Government for Dutch plans to phase out coal by 2030. However, the Treaty was [recently ruled inapplicable](#) between EU Member States because of “incompatibility” with EU law. Although this ruling will need be tested in Member States’ own courts, **due to Brexit, the UK remains vulnerable to these vast corporate claims.**

Third, since arbitration of these claims happens behind closed doors, there is no accountability and the taxpayer is unable to scrutinise decision-making despite the huge sums of money being lost.

Fourth, a 20-year ‘sunset clause’ enables companies to bring claims against a government for two decades after that country’s withdrawal from the ECT. If the UK withdrew today, British taxpayers would be exposed to and liable for such claims until 2041.

Fifth, the [overwhelming scientific consensus](#) is that human activity is the cause of the [unprecedented ecological destruction](#) and [global heating](#). The ECT, however, brings an **unnecessary burden of costs to the transition away from fossil fuels, and thus [threatens the UK’s Paris Agreement commitments.](#)**

Given these grave and urgent concerns, we urge the UK Government to:

- **immediately withdraw from the ECT** (and not to re-ratify it)
- seek a less destructive multilateral energy competition agreement based around a green energy transition
- **push for renegotiation of the 20-year ‘sunset’ withdrawal mechanism**, around principles of negotiated ‘neutralisation’; for legal precedent of this approach, see [Client Earth 2021](#).

The ECT is a multilateral agreement, and it is unlikely that all 50+ signatories would agree to the removal of the ‘sunset clause’: therefore, [to protect energy affordability in Britain, British taxpayers, and the climate](#), **the UK must seek agreement to achieve ‘neutralisation’**. Without the protections now afforded to EU Member States by the European Court of Justice’s ruling, it is imperative that the UK Government **seeks reform, so that the UK is not held hostage to litigation from European and other energy corporations – especially in the current pressing climate crisis.**

For further information contact the author at tom.j.pettinger@warwick.ac.uk. Contact Prof Alison Scott-Baumann for access to other experts at as150@soas.ac.uk, and visit [our website](#) for more information. *The views expressed in SOAS ICOP Briefings are those of the authors and do not necessarily represent those of SOAS.*