31 March 2026

Veblen Institute's submission to the COP30 Presidency Roadmap for Transitioning Away from Fossil Fuels in a Just, Orderly and Equitable Manner

(a) What are the most critical barriers - whether physical, economic, financial, institutional, technological or social - preventing a transition away from fossil fuels?

The investment protection regime allows foreign investors to challenge host states through an ad hoc Investor-State Dispute Settlement (ISDS) mechanism. Investors can trigger this mechanism if they believe that States have breached investment protection provisions contained in bilateral agreements by adopting measures that harm their interests. The amounts that investors may claim in disputes (if the outcome is in their favour) can be considerable. The very foundations of this regime call into question the States' regulatory power, particularly on climate policy.

An analysis by E3G published[1] in mid-2024 shows that investment treaties protect around 2 gigatonnes (Gt) of CO_2-equivalent in potential greenhouse gas emissions each year. Of these emissions, G7 countries are responsible for protecting 50% (1 Gt CO_2e) abroad, led by the United Kingdom, Japan, France, and the United States. The ranking of the 10 investment treaties that protect the highest levels of greenhouse gas emissions through ISDS[2] highlights the following:

- The Energy Charter Treaty (ECT) remains the most harmful to energy transition, by still potentially protecting 319.7 MtCO_2e per year.
- The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) ranks second, with 164.9 MtCO_2e.
- Two bilateral agreements also feature among the 10 worst agreements: the Kazakhstan/United States and Indonesia/Japan investment treaties.

With ISDS, fossil fuel investors seek to delay or obtain substantial financial compensation against measures aimed at phasing out or stranding their assets:

- The fossil fuel sector is the largest user of investment arbitration, accounting for 20% of known cases, ahead of the extractive sector, which represents 11%[3].
- Most known cases have been decided in favour of investors.
- On the merits, investors have won in 72% of cases[4].

[1] https://www.e3g.org/publications/investment-treaties-are-undermining-the-global-energy-transition/
[2] https://www.e3g.org/news/the-energy-charter-treaty-remains-the-most-dangerous-to-the-energy-transition/
[3] Investor-State Disputes in the Fossil Industry, IISD, Lea Salvatore, December 2021, https://www.iisd.org/publications/report/investor-state-disputes-fossil-fuel-industry
[4] Ibid.

- The average amount awarded in fossil fuel-related disputes - over USD 600 million - is nearly five times higher than that granted in other cases[5].

Landmark examples

Rockhopper v. Italy case, brought under the ECT (the most frequently invoked treaty), where a refusal to grant an oil exploration permit was deemed an indirect expropriation, resulting in more than €240 million in compensation. The company announced that it would reinvest this amount in the development of another oil project off the Falkland Islands[6]. Subsequently, Italy succeeded in having the award annulled, but on procedural grounds (following the conviction of an arbitrator for corruption). However, a new arbitration claim was later refiled by the investor[7].

The Netherlands has also been targeted by claims following the adoption of a coal phase-out law[8] and more recently over the early termination of gas extraction in the province of Groningen[9].

For its part, **Slovenia** was challenged over its ban on hydraulic fracturing[10].

Beyond actual disputes, mere threats from investors or even governments' anticipation of potential claims can delay or weaken the ambition of climate action, a phenomenon known as regulatory chill.

- Several governments, notably in Denmark, Germany, and New Zealand, have acknowledged that some of their recent decisions on phasing out fossil fuels were partly designed to minimise the risk of disputes[11].
- In France, the Hulot Law on Hydrocarbon Exploration was also subject to threats from the company Vermilion before the Conseil d'État[12]

There is a growing recognition of the incompatibility of the investment protection regime with the implementation of the Paris Agreement:

- The IPCC acknowledges that international investment treaties, particularly the ECT, constrain States' ability to adopt ambitious climate policies (see the Third Working Group Report on Climate Change Mitigation, 2022[13]).

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[5] Ibid.

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

[7] https://www.iareporter.com/articles/meg-kinnear-is-tapped-to-chair-rockhopper-v-italy-resubmission-tribunal/

[8] RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands, ICSID Case No. ARB/21/4 and Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v. Kingdom of the Netherlands, ICSID Case No. ARB/21/22

[9] https://www.somo.nl/shell-files-new-arbitration-against-the-netherlands-over-groningen-gas-field-closure/

[10] Ascent v. Slovenia Ascent Resources Plc and Ascent Slovenia Ltd v. Republic of Slovenia (ICSID Case No. ARB/22/21) https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1252/ascent-v-slovenia

[11] CABINET BALDON, *Regulatory chill*, Annex to the complaint filed in June 2022 by five young climate victims before the European Court of Human Rights against twelve States regarding their participation in the Energy Charter Treaty, https://www.exitect.org/sites/default/files/2022-06/Summary_Note_on_Regulatory_Chill.pdf

[12] Comment la menace d'arbitrage a permis aux lobbys de détricoter la loi Hulot (lemonde.fr)

[13] https://www.ipcc.ch/report/ar6/wg3/ On biodiversity, IPBES recently reached a similar conclusion, noting that multilateral trade and investment agreements can also make it more difficult for states to prioritise environmental health. See IPBES Transformative Change Assessment: Chapter 4. Overcoming the challenges of achieving transformative change towards a sustainable world, Avril 2025 : "Importantly, whether or not businesses do relocate, policy makers

- The UN Special Rapporteur on Human Rights and Environment, David Boyd, has called on States to terminate, unilaterally or jointly, international investment treaties containing ISDS, warning of "the surge in ISDS cases filed by fossil fuel investors" using investment treaties, especially the ECT[14].
- In 2025, the UN Special Rapporteur on Human Rights and Climate Change, Elisa Morgera, published a report titled *The Imperative to Phase Out Fossil Fuels from Our Economies*, highlighting the investor-state dispute settlement mechanism[15].
- At the national level, the Haut Conseil pour le Climat, in France, issued an opinion in October 2022 in favour of exiting the ECT[16]. Likewise, the UK Climate Change Committee noted in June 2023 that participation "in outdated treaties like the ECT risks delaying the low-carbon transition[17]".

The OECD has launched a discussion process aimed at revising investment protection policies in light of the Paris Agreement, in particular Article 2.1(c), which calls for aligning financial flows with climate objectives[18]. In this context, it conducted a survey on climate-related policies and practices that governments have implemented or are considering with respect to their investment treaties. Among the key findings:

- 78% of respondents consider it very important to align financial flows associated with investment treaties with Article 2.1(c) of the Paris Agreement.
- More than one-fifth (22%) of respondents report having received more than one threat of ISDS claims related to their climate policies and acknowledge having repeatedly considered the risk of such claims when designing climate or environmental measures.

(b) What potential levers, whether economic, financial, institutional, social or technological, exist for accelerating the implementation of the transitioning away commitment?

States have several possible courses of action at their disposal (from the most ambitious to the least ambitious):

- Withdrawal from agreements with neutralisation of the survival clause (where the withdrawal is negotiated between the different parties)
- Adoption of explicit fossil fuel investment exclusion clauses (carve-outs), as well as climate and human rights clauses in existing treaties.
- Denying access to arbitration for investors challenging regulatory measures on divestment or bans on new fossil fuel projects adopted in fulfilment of climate obligations that are *erga omnes* binding on States, as clarified in the Advisory opinion on Climate Change of 23 July 2025.

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reportedly perceive the threat of relocation or litigation and make decisions accordingly, creating a "regulatory chill", meaning that the State becomes less inclined to enact stronger laws and policies for fear of capital flight (Konisky, 2007; Tienhaara, 2018; Tienhaara et al., 2022). Multilateral trade and investment agreements can also make it challenging for States to prioritize environmental health (McCarthy, 2004; Tienhaara et al., 2022)." (p.20)

[14] https://www.ohchr.org/en/documents/thematic-reports/a78168-paying-polluters-catastrophic-consequences-investor-state-dispute

[15] See press release and report, De-fossilising economies key to course correction on climate change and human rights protection, says UN expert

[16] https://www.hautconseilclimat.fr/publications/avis-sur-la-modernisation-du-traite-sur-la-charte-de-lenergie/

[17] https://www.theccc.org.uk/publication/2023-progress-report-to-parliament/

[18] 9th Investment Treaty Conference - OECD

After several years of discussions in the **process aimed at revising investment protection policies in light of the Paris Agreement, in particular Article 2.1(c)**, the OECD Secretariat has put forward concrete proposals to implement the exclusion of fossil fuel investments under existing agreements:

- A first proposal to exclude fossil fuel investments from the scope of protection of investment treaties[19].
- A second, potentially complementary proposal to exclude climate policies from the types of state measures that can be challenged in disputes[20].

(c) What country, regional or sector roadmap experiences, best practices, and lessons learned can be shared?

A frequent concern raised in discussions about reforming or terminating investment protection agreements is that such moves would be unprecedented, destabilising - all the more so in the current context of challenges to international law - or legally impractical. In reality, states have repeatedly demonstrated both the capacity and the willingness to withdraw from, or modernise international investment agreements (IIAs) when these no longer align with public policy objectives. Other States, such as Brazil, have never ratified any investment agreement containing an ISDS mechanism.

1. Examples of countries withdrawing from IIAs

After a period of exceptional proliferation in the number of BITs between 1980 and 2015, the total stock of agreements started to decline for the first time in 2017 and continued to decrease regularly between 2019 and 2022. This has no longer been the case since 2023.

The European Union itself provides a first and highly significant precedent. Following the Court of Justice of the European Union's Achmea judgment (2018), Member States agreed to terminate all intra-EU bilateral investment treaties (BITs). In 2020, 23 Member States signed a plurilateral agreement formally terminating these treaties and neutralising intra-EU ISDS mechanisms. This marked a systemic rollback of investor-state arbitration within the internal market.

A second major example is the coordinated withdrawal from the Energy Charter Treaty (ECT). After Italy in 2016, several EU Member States — Denmark, France, Germany, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovenia, Spain — have announced or completed their withdrawal from the ECT, citing incompatibility with climate objectives and the risks posed by fossil fuel-related arbitration claims. In parallel, the European Union itself has withdrawn in June 2025. And in January 2026, the European Commission initiated legal action against 16 Member States that remain contracting parties to the ECT (Belgium, Bulgaria, Czechia, Estonia, Ireland, Greece, Croatia, Cyprus, Latvia, Hungary, Malta, Austria, Romania, Slovakia, Finland

[19] OECD Secretariat note on Methods to align investment treaty benefits for energy investment with the Paris Agreement and net zero, June 2024, https://one.oecd.org/document/DAF/INV/TR1/WD(2024)1/REV1/en/pdf
[20] See for instance the proposal of Joshua Paine, Elizabeth Sheargold, A Climate Change Carve-Out for Investment Treaties, Journal of International Economic Law, Volume 26, Issue 2, June 2023, Pages 285–304, https://doi.org/10.1093/jiel/jgad011

and Sweden. This represents a clear recognition that treaty-based fossil investment protection can conflict with energy transition goals.

Outside Europe, the United States, Canada and Mexico fundamentally restructured their investment relationship when replacing NAFTA with the United States–Mexico–Canada Agreement (USMCA). ISDS between the United States and Canada was eliminated entirely. Investor–state arbitration was significantly curtailed even between the United States and Mexico and limited to specific sectors and conditions. This demonstrates that even deeply integrated economies can scale back ISDS when political consensus emerges.

Other examples include:

- South Africa, which terminated several BITs and replaced them with a domestic investment protection framework aligned with constitutional principles.

- Indonesia and India, which have terminated or renegotiated numerous BITs to rebalance investor protections and safeguard regulatory space.

- Bolivia, Ecuador and Venezuela, which withdrew from the ICSID Convention (even if these countries are currently rejoining ICSID)

- In 2022, Australia adopted a policy with a commitment to exclude ISDS from any new treaty and to reform existing ISDS mechanism. Australia is currently renegotiating treaties containing ISDS with several European countries.
- Colombia, which has just announced[21] that it will withdraw from the ISDS system, in response to a letter signed by 200 leading economists and academics[22] calling for a multilateral action to exit ISDS, ahead of the First Conference on transitioning away from fossil fuels in Santa Marta, in April 2026.

These examples illustrate that withdrawal of investment protection mechanisms is neither legally extraordinary nor economically prohibitive. It is a recognised sovereign choice.

2. Examples of treaty reform limiting fossil fuel protection

States have also modified existing agreements to introduce safeguards that reduce the exposure of climate policies to arbitration.

The modernised Energy Charter Treaty text (although now largely overtaken by withdrawals) attempted to allow parties to exclude new fossil fuel investments from protection and to phase out protection for existing fossil assets over time. Initially, the EU and the UK[23] had made use of this option.

In its resolution of 23 June 2022 on the future of the European Union's policy on international investment[24], the European Parliament sets as an objective 'the exclusion of investments in fossil

[21] https://www.presidencia.gov.co/prensa/Paginas/Colombia-saldra-del-regimen-de-arbitraje-internacional-de-inversion-presidente-260325.aspx
[22] https://www.bu.edu/gdp/2026/03/19/isds-letter/
[23] https://www.openexp.eu/sites/default/files/publication/files/ect_understanding_what_is_at_stake_and_whats_next.pdf
[24] European Parliament resolution of 23 June 2022 on the future of EU international investment policy (2021/2176(INI))

fuels or in any other activities that seriously harm the environment and human rights' from the scope of investments that benefit from legal protection."

Similarly, some states have narrowed ISDS access by carving out sensitive sectors, even not necessarily for climate reasons. For instance, only investors in specific sectors (notably oil and gas, power generation, telecommunications, transportation, and certain infrastructure projects) retain access to ISDS between Mexico and the US under the USMCA.

While these reforms do not fully eliminate climate-related litigation risks, they show that treaty architecture can be recalibrated to align with decarbonisation pathways.

3. A relevant parallel: the OECD tax treaty reform

A useful comparison can be drawn with the evolution of international tax cooperation. For decades, bilateral tax treaties were based on exchange of information "upon request," a system that proved insufficient to combat tax evasion.

In response, states, under OECD leadership, developed the Common Reporting Standard (CRS), introducing automatic exchange of financial account information. Crucially, they adopted a multilateral convention - the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, complemented by the Multilateral Instrument (MLI) - allowing signatories to update large networks of existing bilateral treaties simultaneously without renegotiating each one individually.

This plurilateral mechanism enabled rapid and coordinated reform of thousands of bilateral agreements, fundamentally transforming global tax transparency standards.

The lesson is clear: when systemic risks become evident - whether tax evasion or climate-constrained energy transition - States can collectively modernise entrenched treaty networks through coordinated legal innovation.

(d) How can a just, orderly and equitable transition best reflect the diverse realities of countries at different stages of development and with different degrees of dependence on fossil fuels?

Ending protection for fossil fuel investments is an essential prerequisite to ensure that taxpayers do not bear the excessive costs of the transition by compensating fossil fuel investors — often under valuation methods highly favourable to them — for public policies aimed at phasing out fossil fuels that lead to stranded assets.

Such a withdrawal of protection does not, however, prejudge the trajectory or pace of the fossil fuel phase-out, which may legitimately vary across countries depending on their level of wealth and degree of dependence on fossil fuels.