

Energy treaty update fails to address climate crisis, activists say

1994 agreement allows investors to sue governments for changes in energy policy that harm their profits



On Thursday, Extinction Rebellion activists delayed the start of treaty negotiations by about one hour. Photograph: Extinction Rebellion Deutschland/Reuters

Jennifer Rankin in Brussels

Fri 24 Jun 2022 17.01 BST

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Climate activists have said a deal to update a “dangerous” energy treaty has failed to make the agreement compatible with the urgency of the climate crisis.

After more than four years of talks, 52 countries and the EU on Friday struck a deal to “modernise” the energy charter treaty, a 1994 agreement that allows investors to sue governments for changes in energy policy that harm their profits.

The treaty has been described by a former whistleblower as “a real threat” to the landmark Paris climate agreement, which aims to cap global heating at 1.5C, because it is feared that governments would blow their green transition budgets on compensating the owners of coalmines, oil wells and other fossil fuel projects.

This week 76 climate scientists told EU leaders that even a modernised ECT would “jeopardise the EU climate neutrality target and the EU green deal”, referring to a swathe of policy proposals launched last year to tackle the climate crisis.

The compromise agreement, which was largely designed by the EU, reduces the protection afforded to companies that have invested in oil and gas projects. But a fossil fuel exemption would not kick in until 2033 at the earliest.

Under the deal, new fossil fuel investments will cease to be protected in the EU and UK from mid August 2023. Existing fossil fuel investments in the EU and UK would lose protection after 10 years. But the 10-year phase-out for oil and gas only comes into force once the treaty has been ratified by three-quarters of the ECT’s 53 signatories.

Moreover, the fossil fuel carve-out does not bind countries. While the EU and UK have chosen to end protection for oil and gas investments, other ECT signatories, such as central Asian states, Switzerland and Japan, can maintain protection for fossil fuel investors. Member countries are expected to formally approve the deal in November, but it would still need to be ratified by each capital.

“With a 10-year phase-out period for fossil fuel investments, EU countries could still be sued for putting in place progressive climate policies for at least another decade – the key window for action if humanity is to avoid climate catastrophe,” said Amandine Van Den Berghe, a lawyer at the NGO ClientEarth.

“The new treaty will also open the door to a wave of financial compensation claims protecting investments in energy sources and technologies raising significant sustainability concerns, such as biomass, hydrogen and carbon capture storage,” she said, referring to the decision to extend treaty protection to these areas.

“The bottom line is we are still left with a dangerous agreement that will obstruct urgent action to tackle the climate crisis for years to come. The EU must finally do what is necessary for climate and legally right: walk away.”

France, Germany, Spain, Poland and the Netherlands have called on the European Commission to study withdrawing from the agreement. This week Spain’s deputy prime minister went public with her concerns. Speaking before the outcome of negotiations was confirmed, Teresa Ribera said 14 rounds of talks on reforming treaty had made clear it “will fail to ensure the alignment of the ECT with the Paris agreement and the objectives of the European green deal”. She **told Politico** it was time for the EU and its member states to “initiate a coordinated withdrawal”.

Her intervention casts doubt over whether the EU can ratify the treaty, which also must be approved by the European parliament.

EU officials say their negotiating position was endorsed by all 27 EU member states. Officials argue that withdrawing from the treaty does not protect EU interests, because investors would have a 20-year period to sue governments, because of a lengthy sunset clause.

The commission said the modernised ECT preserved “the right of governments to pursue their public policy objectives, including for climate change mitigation and adaptation. This fully preserves the EU’s ability to develop our climate policies. We have thereby aligned the ECT with the Paris agreement and our environmental objectives.”

Climate activists disagree, contending that countries could quit the treaty and agree to protect each other from ECT claims.

“We are talking about timeframes that could protect the benefit of the fossil fuel industry well into 2030, and the thing is we don’t have time to wait until 2030 for climate action, we need it now,” said Chloé Mikolajczak, a spokesperson for Extinction Rebellion Belgium.

On Thursday **Extinction Rebellion** activists delayed the start of treaty negotiations by about an hour by gluing themselves to meeting tables, before their protest was broken up by police. Outside the Brussels headquarters of the

ECT secretariat, a few dozen activists staged a “die in”, lying on the entrance steps amid fake oil, with a banner reading “stop protecting fossil fuel profits”.

Mikolajczak said they would continue to target the treaty among “any policy that is harmful for the climate”.

The British government welcomed the agreement, saying it would protect “the UK government’s sovereign right to change its own energy systems to reach emissions reductions targets in line with the Paris agreement”. Greg Hands, the energy minister, said: “The UK cannot support an outdated treaty which holds back investment in clean energy and puts British taxpayers at increased risk from costly legal challenges.”