



A predictable investment environment enables the energy transition

FACT SHEET

- In 2019 the Netherlands adopted a law that prohibits the use of coal in energy production by 2030 at the latest.
- The law orders the closure of five coal-fired power plants earlier than their scheduled end of life.
- Among the coal-fired power plants to be closed early is Fortum subsidiary Uniper's Maasvlakte 3 power plant. The energy strategy of the Dutch Government in the late 2000s deemed the additional construction of coal power as necessary for the supply of secure and affordable energy. That's when also the construction of Uniper's Maasvlakte 3 power plant was started.
- The international Energy Charter Treaty protects foreign investors in situations where the target country amends its legislation unpredictably from the legislative environment to which the country had previously committed itself.

The Dutch law prohibiting the use of coal in energy production orders the early closure of five coal-fired power plants

In 2019 the Netherlands adopted a law that prohibits the use of coal in energy production by 2030 at the latest. The law is part of the Netherlands' national strategy to cut the country's greenhouse gas emissions by 49 per cent by 2030 from the 1990 level.

For the coal-fired plants, the Netherlands' altered political operating environment means a premature ending of the plants' useful life, if replacing the coal with biofuel, e.g., is not profitable.

When the law was enacted, there were five coal-fired power plants in the Netherlands. The Dutch Government has decided to pay compensation to the owners of two of these plants for the early

closure of these plants. One of the remaining power plants is Maasvlakte 3, which is owned by Fortum's subsidiary Uniper.

When construction of the Maasvlakte 3 power plant began in 2008, the Dutch Government announced that coal-fired power plants improve energy security and stated that the country is open to new coal-fired power plant investments in the Netherlands.

Energy sector investments don't have a long enough outlook, without investment protection

The operating environment can change rather quickly, but investments in the energy sector are often made for decades. Changes in the operating environment have a significant impact on energy sector investments, which are large in scale and long in lifetime.

With the energy transition, more investments in clean energy are needed. According to the European Commission's impact assessment, achieving carbon neutrality in line with the EU's climate targets requires doubling the current rate of investment in the energy sector, and that is why the need for a predictable regulatory environment and investment protection will grow. Without investment protection, the lack of prospects for a long-term return on investment can be an obstacle.

The goal of investment protection agreements is to create an open and predictable operating environment for foreign investors. In practice, the agreements protect the investors against discrimination and illegal expropriation or nationalisation. While the agreements don't prohibit national actions, they do require the appropriate compensation for investors.

The agreements often aim to guarantee fair and equal treatment of investors. In practice, this means transparent legislation, predictability, and consideration of the investor's reasoned expectations when amending national legislation. The principle also means that domestic and foreign investors must not be put in an unequal position.

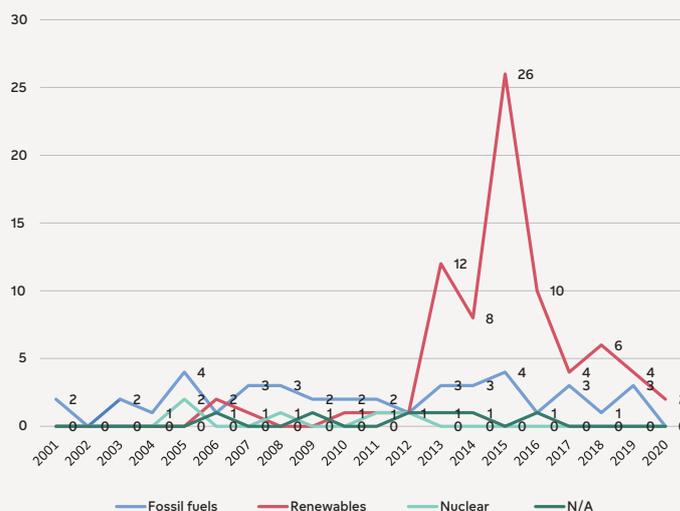
There are thousands of investment protection agreements for different sectors globally. In particular, agreements between two countries are common, but there are also multilateral agreements with investment protection terms.

Energy Charter Treaty

- Sovereign countries have legislative power in their territory and the right to join – or not join – international agreements. Countries that have ratified international agreements may be subject to measures under international law, if they enact laws that violate international agreements.
- The energy sector's investment protections and investment dispute arbitration mechanisms are agreed upon within the framework of the international Energy Charter Treaty.
- The ECT is a multilateral, international treaty in the energy sector. The treaty has been signed by more than 50 countries and all EU member countries, with the exception of Italy. Finland signed the agreement in 1997.
- The main objectives of the ECT are to facilitate the commerce of energy products between the treaty countries and to guarantee the security of energy investments made into another treaty country.
- The Energy Charter Treaty is an independent treaty, and thus not an EU legal instrument but an international treaty binding all treaty parties and it has its own governing bodies.
- The ECT doesn't prevent the signatories (the member countries) from enacting energy sector legislation. Nor does the treaty obligate the countries to allow foreign investments into its energy sector.
- The ECT applies to all energy sector investments. In 2012 the number of renewable energy dispute resolution cases increased dramatically as a result of Spain's changes regarding policy support for renewables.
- Within the framework of the ECT, renewable energy dispute cases have increased the most in recent years.
- In a situation where a country is deemed to have violated an international investment protection agreement, the investors of the agreement party can submit the case to a court of arbitration for review.
- Arbitration doesn't repeal national legislation; it assesses the relationship of a national law or regulation to the obligations of an international agreement.
- Arbitration can only impose compensation or equivalent measures on a party. Only the investor party has the right to initiate the investment dispute procedure.
- Arbitrators are appointed by the company and the country involved.

Statistics of ECT Cases (as of 1/6/2020)

Distribution of Arbitration Cases under the ECT by Energy Sources Involved: 130 cases*



* In seven of these cases, it has not been possible to identify particular energy sources. 54 cases are still pending and in some of the cases, there is no publicly available information on the exact amounts claimed and/or awarded.

Source: [International Energy Charter](https://www.enclaw.com/enclaw-legal-international-energy-charter-treaty-ect-cases/)