SULLIVAN & CROMWELL LLP

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Update on Modernization of the Energy Charter Treaty

Vote on Modernized Energy Charter Treaty Postponed Indefinitely as European Commission Formally Recommends Withdrawal of the EU — Key Considerations for Energy Sector Investors

SUMMARY

In recent years, as more states have implemented initiatives to transition to "greener" economies, some of these initiatives have been challenged by investors as violating investment protections granted through certain investment treaties, such as the Energy Charter Treaty ("ECT"). In light of a growing volume of arbitral awards that have seen billions of euros awarded to investors, contracting parties particularly in the European Union have made attempts to "modernize" the ECT. The proposals to amend the treaty's text have included limiting investment protection to a narrower set of qualifying investors and investments, and more expressly affirming states' ability to phase out protection for fossil fuels investments according to their individual policy goals. However, these attempts have become increasingly uncertain as the vote on the adoption of a "modernized" version of the ECT, originally scheduled for November 2022, has been postponed indefinitely. And, in early July 2023, the European Commission formally proposed the withdrawal of the EU from the ECT. Regardless of whether the "modernized" ECT is adopted, disputes will continue to arise as states attempt to juggle obligations owed to investors under investment treaties vis-à-vis international environmental law obligations that underlie agreements that states have made to transition to "greener" economies. For EU energy sector investors with investments in EU member states in particular, it remains uncertain whether international arbitration under the ECT will remain a viable avenue to resolve such disputes in the future.

I. BACKGROUND

Signed in 1994 and entered into force in 1998, the Energy Charter Treaty ("ECT") is a multilateral treaty that seeks to promote international cooperation, including protection for investments, in the energy sector. At the time of writing, there are 54 Contracting Parties and Signatories to the ECT spread throughout Asia and Europe. The European Union, European Atomic Energy Community (EURATOM), and 26 EU member states (collectively, the "EU Contracting Parties") are parties to the ECT.[1] Other non-EU Contracting Parties include Japan, Kazakhstan, Switzerland, Turkey, Ukraine, and the United Kingdom.[2]

The ECT requires Contracting Parties to afford investment protection to investors from the other Contracting Parties for qualifying investments in the energy sector. These protections include affording fair and equitable treatment, prohibiting expropriation without compensation, and protecting against discriminatory trade in energy-related products. The treaty also provides that any disputes between a Contracting Party and an investor of another Contracting Party relating to a covered investment will be resolved through international arbitration under the ICSID, UNCITRAL, or Stockholm Chamber of Commerce ("SCC") arbitration rules.

The ECT has come under increased criticism in recent years in connection with some investors' invocation of its dispute resolution provisions to challenge policy initiatives aimed at advancing the transition to "greener" economies. According to the Energy Charter Treaty Secretariat, as of May 1, 2023, 158 known investment arbitration cases have been initiated under the ECT, approximately 60% of which relate to renewable energy investments, and 34% to fossil fuel-related investments.[3] More than EUR 40 billion has been awarded to investors who have brought claims under the ECT.[4]

In response, a number of European states have announced their intent to withdraw from the ECT over the past year, including Poland, Spain, the Netherlands, France, Germany, Slovenia, Luxembourg, Belgium, and Denmark. In parallel, the EU Contracting Parties have spearheaded attempts to negotiate a series of reforms to "modernize" the ECT. An agreement in principle on the "Modernized ECT" was reached on June 24, 2022 among the Contracting Parties. An amended version of that agreement was expected to be put to a vote by the Contracting Parties on November 22, 2022, but the vote was rescheduled to April 2023 and then further postponed indefinitely.[5] In the intervening months, the European Parliament urged the European Commission and EU Contracting Parties to implement a "coordinated exit" from the ECT.[6] This resulted in the European Commission subsequently recommending in February 2023 that the EU Contracting Parties carry out a coordinated withdrawal.[7] Then, on July 7, 2023, the Commission formally proposed that the EU and EURATOM withdraw from the ECT,[8] to which the Energy Charter Secretary-General has expressed "profound regret."[9]

There are now two potential scenarios for the future of the ECT, both of which imply substantial changes to its existing framework and the protections it provides to investors in the energy sector across several

key regions. The first scenario is a mass exodus of the EU Contracting Parties from the ECT, while the remaining non-EU Contracting Parties continue to be bound by the ECT in its current form. The second scenario is the adoption of a "modernized" ECT, although this scenario appears increasingly unlikely. Although the Energy Charter Secretary-General noted that the European Council could adopt both "a decision to withdraw the EU/EURATOM from the ECT" and "a non-objection to modernise the ECT,"[10] the European Commission found that the continued absence of a common EU position made the adoption of a "modernized" ECT "impossible."[11]

We discuss both scenarios below.

II. WHAT HAPPENS IF THE EU CONTRACTING PARTIES WITHDRAW *EN MASSE* FROM THE ECT?

Implications for the Withdrawing Contracting Parties

Withdrawing from the ECT means that a Contracting Party (or the EU as a bloc) terminates its future obligations under the treaty, including its investor-state dispute settlement obligations. Termination takes effect one year after formal notification of an intent to withdraw. In addition, pursuant to the sunset clause in Article 47 of the ECT, existing investments made in the territory of the withdrawing Contracting Party remain protected under the ECT for a further period of 20 years. Thus, if a Contracting Party provides formal notification of withdrawal in 2023, existing investments covered by the ECT at the time of the withdrawal should be protected until 2044 (*i.e.*, 20 years after the withdrawal takes effect in 2024). This means that investors could still launch claims under the ECT against the withdrawing Contracting Party until 2044.[12]

Some Contracting Parties have considered ways to extinguish or limit the effect of the sunset clause. For example, the EU Contracting Parties have floated the idea of entering into an agreement to "neutralize" (*i.e.*, extinguish) the legal effects of the ECT's 20-year sunset clause as among themselves. More recently, however, the European Commission has taken the position that the sunset clause "would have no impact on intra-EU relations, to which the ECT has never, does not and will never apply."[13] Contracting Parties may also alternatively seek to avoid the sunset clause by withdrawing from the ECT on the basis of the customary international law principle that there has been a "fundamental change of circumstances."[14] However, there may be grounds under the ECT and broader principles of international law on which investors could dispute the efficacy of such attempts to neutralize the effects of the ECT's sunset clause.[15]

Implications for Investors

Even if the ECT's sunset clause remains in effect, EU investors seeking to arbitrate a dispute against an EU Contracting Party under the ECT will face challenges in connection with the Court of Justice of the European Union's ("CJEU") rulings in *Achmea* v. *Slovakia* (2018) and *Moldova* v. *Komstroy* (2021) that

arbitrating an intra-EU investment dispute, including under the ECT, is contrary to EU law.[16] While some international arbitration tribunals not seated in the EU have found that these decisions do not present an obstacle to arbitrating disputes under the ECT,[17] others seated in EU jurisdictions have declined jurisdiction on the basis of *Achmea* and *Komstroy*.[18] In addition, all national courts of EU member states are bound by the rulings of the CJEU—this means that any award obtained in violation of *Achmea*/*Komstroy* would not be enforceable in the EU.[19]

A similar split has arisen among United States district courts when it comes to enforcing awards arising from arbitrations involving EU nationals and an EU member state. In March 2023, a U.S. court for the first time denied enforcement of an UNCITRAL award—issued under the ECT by a tribunal seated in Switzerland—against Spain on the basis that, under EU law, Spain lacked legal capacity to enter into the arbitration agreement with the Dutch claimant in question.[20] By contrast, a different judge sitting on the same U.S. court had previously granted enforcement of an ICSID ECT award between Spain and a different Dutch claimant.[21]

Investors with investments in the territory of an EU Contracting Party should consider reviewing existing (or forthcoming) contracts with a view to preserving the availability of dispute resolution mechanisms under the ECT. For example, EU investors may consider whether selection of a non-EU seat of arbitration or agreeing to an arbitration administered by ICSID, which provides a "delocalised" dispute resolution mechanism detached from the law of the seat, could provide investors with additional grounds to argue that *Achmea* and *Komstroy* do not apply.[22] However, such agreements may not fully address challenges that may be encountered in the enforcement of an intra-EU ECT award.

III. WHAT HAPPENS IF THE MODERNIZED ECT IS ADOPTED WITH SUPPORT FROM THE EU CONTRACTING PARTIES?

If the EU Contracting Parties do not withdraw *en masse* from the ECT, there is a chance that the ECT may be adopted in the "modernized" form envisaged by the agreement in principle reached in June 2022. However, given the European Commission's recent proposal for an EU/EURATOM withdrawal and the continued absence of a common EU position on the Modernized ECT, the likelihood of the adoption of the Modernized ECT has significantly diminished. In any event, even if the Modernized ECT is adopted, it will only enter into force 90 days after at least three-fourths of the Contracting Parties have ratified it, a process that in itself can take years.

By affording more limited investment protection to a narrower set of investors and investments, the Modernized ECT differs substantively from the existing version in several key ways:[23]

- It affirms the Contracting Parties' right to regulate "in the interest of legitimate public policy objectives," including expressly with respect to "climate change mitigation and adaptation," which means that claims brought against non-discriminatory measures that are adopted with environmental policy goals in mind will no longer be arbitrable, except in "rare circumstances."

- Investors must conduct "substantial business activities" in the host Contracting Party in order to qualify for protection. Thus, investors with shell entities are excluded from investment protection.
- The definition of investment "excludes the coverage of judicial and administrative decisions and arbitral awards as well as limits the coverage of claims to money and credit arising solely from commercial transactions for the sale of goods and services."
- The investor-state dispute settlement provision of the Modernized ECT expressly does not apply to intra-EU disputes (*i.e.*, between an EU investor and an EU Contracting Party), regardless of whether the arbitration is seated in an EU member state or not.
- Under a new "flexibility mechanism," Contracting Parties may phase out investment protection for fossil fuels in their territories according to their individual policy goals.[24]

These changes are in line with recent investment treaty drafting trends allowing states to "take back" space for future regulation.[25] For example, various recent BITs contain provisions expressly articulating environmentally leaning policy objectives,[26] requiring compliance by investors with international environmental standards,[27] or empowering states to take non-discriminatory measures in the interests of environmental concerns.[28] These trends are also reflected in other regional agreements seeking to support the "purpose and goals of the Paris Agreement."[29]

Accordingly, even if the Modernized ECT is adopted, investors should continue to remain vigilant of any changes in environmental goals and policy directions of the Contracting Parties in whose territory their investment is situated as such changes could limit recourse under the Modernized ECT.

IV. CONSIDERATIONS FOR THE FUTURE

If adopted, the Modernized ECT would introduce a more restrictive investment protection regime. However, the adoption of the Modernized ECT is of diminishing likelihood given the continued absence of a common EU position on it, as well as the European Commission's formal proposal to the European Council for the withdrawal of the EU and EURATOM from the ECT. If these parties end up withdrawing from the treaty *en masse*, the issue remains as to whether they could successfully neutralize, or otherwise agree on, the effects of the 20-year sunset clause. In any event, EU investors in particular should be mindful of the potential obstacles they may encounter when bringing ECT claims or enforcing ECT awards against an EU Contracting Party, especially in EU-seated, non-ICSID arbitrations.

Overall, the ECT is but one multilateral investment treaty in a spaghetti bowl of more than 2,500 multilateral and bilateral investment treaties that exist today. Many of the ECT's Contracting Parties have entered into other investment treaties, and investors with investments located in a particular ECT Contracting Party may have recourse to the investment protection provisions (including international arbitration provisions) in such other treaties.[30] In the event that an EU Contracting Party chooses to

withdraw from the ECT, a careful analysis of those other applicable treaties would be necessary to determine the extent of alternative remedies available to such investors. Other remedies may also be available under domestic regulations or pursuant to other international law obligations.

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ENDNOTES

1 ENERGY CHARTER SECRETARIAT, *Contracting Parties and Signatories of the Energy Charter Treaty*, https://www.energychartertreaty.org/treaty/contracting-parties-and-signatories/. The EU Contracting Parties do not include Italy, which withdrew from the ECT on January 1, 2016 but remains subject to the ECT's sunset clause. *See infra* note 12.

2 Australia, Belarus, Norway, and Russia are signatories of the ECT but have not ratified it. The extraordinary Energy Charter Conference of June 24, 2022 (i) withdrew the observer status of Russia and (ii) suspended the provisional application of the ECT in relation to Belarus and suspended its observer status. *See Decision of the Energy Charter Conference, Withdrawal of the observer status of the Russian Federation* (June 24, 2022), https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2022/CCDEC202212.pdf; *Decision of the Energy Charter Conference, Suspension of the Provisional Application of the ECT in Relation to Belarus*, https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2022/CCDEC202211.pdf.

3 ENERGY CHARTER SECRETARIAT, *Statistics of ECT Cases (as of May 1, 2023)*, https://www.energychartertreaty.org/fileadmin/user_upload/All_statistics_-_1_May_2023.pdf.

4 *Id.*

5 *See* Erik Brouwer, INVESTMENT ARBITRATION REPORTER, *Planned Vote on Modernised ECT is Postponed, as EU Member States and Institutions Discuss Way Forward* (Apr. 28, 2023), https://www.iareporter.com/articles/planned-vote-on-modernised-ect-is-postponed-as-eu-member-states-and-institutions-discuss-way-forward/.

6 *See, e.g.*, *European Parliament resolution of 24 November 2022 on the outcome of the modernisation of the Energy Charter Treaty (2022/2934(RSP))*, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0421_EN.pdf.

7 *See* Caroline Simson, LAW360, *In Reversal, Europe's Executive Arm Looks To United ECT Exit* (Feb. 8, 2023), https://www.law360.com/internationalarbitration/articles/1574338.

8 EUROPEAN COMMISSION DIRECTORATE-GENERAL FOR ENERGY, *Coordinated EU withdrawal from the Energy Charter Treaty* (July 7, 2023), https://energy.ec.europa.eu/publications/coordinated-eu-withdrawal-energy-charter-treaty_en.

9 ENERGY CHARTER SECRETARIAT, *Statement by the Secretary General of the Energy Charter Secretariat on the draft Council Decision proposing the withdrawal of the European Union from the Energy Charter Treaty* (July 11, 2023), https://www.energycharter.org/media/news/article/statement-by-the-secretary-general-of-the-energy-charter-secretariat-on-the-draft-council-decision-p/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=44c59eb08571a57c64875f5eb94512d2.

10 *Id.*

11 EUROPEAN COMMISSION, *Proposal for a Council decision on the Union withdrawal from the Energy Charter Treaty*, COM(2023) 447 final (July 7, 2023), https://energy.ec.europa.eu/system/files/2023-07/COM_2023_447_1_EN_ACT_part1_v1.pdf.

12 *See Rockhopper* v. *Italian Republic*, ICSID Case No. ARB/17/14, where an ICSID tribunal in August 2022 awarded a British oil and gas exploration company €190 million in damages for Italy's refusal to grant it a production concession. A claim under the ECT was launched in 2017 and despite Italy having withdrawn from the ECT in 2016, it was found to be bound by the 20-year sunset clause.

13 *Supra* note 11.

ENDNOTES (CONTINUED)

[14] This principle is embodied in Article 62 of the Vienna Convention on the Law of Treaties ("VCLT"). *See Vienna Convention on the Law of Treaties* (1969), https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[15] For example, the efficacy of an *inter se* agreement may be challenged on the basis of Article 16 of the ECT, which states that nothing in the terms of a subsequent international agreement between the Contracting Parties "shall be construed to derogate from any provision" governing investment protections and access to arbitration under the ECT. For Contracting Parties wishing to invoke VCLT's Article 62, the Energy Charter Secretary-General has stated that they "may need to show that the changed circumstances were essential at the time of the conclusion of the ECT, their change was unforeseen, and that such change radically transforms the extent of obligations under the ECT." The Energy Charter Secretary-General has also noted that the International Court of Justice, in *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, did "not consider that new developments in the state of environmental knowledge and of environmental law can be said to have been completely unforeseen." *See* ENERGY CHARTER SECRETARIAT, *Sunset Clause (Article 47 of the ECT) in relation to Article 62 of the Vienna Convention on the Law of Treaties (VCLT)* (Nov. 3, 2022), https://www.energycharter.org/media/news/article/sunset-clause-article-47-of-the-ect-in-relation-to-article-62-of-the-vienna-convention-on-the-law/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=2bb5c61067d92435141116c1e4e53f81.

[16] In *Slovak Republic* v. *Achmea B.V.*, the CJEU ruled that the dispute resolution clause in the Netherlands-Slovakia BIT, which provided for arbitration proceeding governed by the UNCITRAL Rules, was incompatible with EU law because it allowed an arbitral tribunal to interpret EU law outside of the EU legal order. *See* Case C-284/16 (Judgment of the Court of Mar. 6, 2018); *see also Republic of Poland* v. *PL Holdings Sàrl*, Case C-109/20 (Judgment of the Court of Oct. 26, 2021) (holding that EU member states and EU investors were prohibited from entering into *ad hoc* arbitration agreement with the same content as an invalid arbitration clause in the BLEU-Poland BIT to circumvent *Achmea*). The CJEU subsequently extended its ruling to the dispute resolution provisions of the ECT in *Republic of Moldova* v. *Komstroy LLC*. *See* Case C-741/19 (Judgment of the Court of Sept. 2, 2021).

[17] *See*, *e.g.*, *Landesbank Baden-Württemberg and others* v. *Kingdom of Spain*, ICSID Case No. ARB/15/45, Decision on the Respondent's Application for Reconsideration of the Tribunal's Decision of 25 February 2019 Regarding the "Intra-EU" Jurisdictional Objection (Nov. 11, 2021), ¶¶ 54-55 (concluding that the CJEU's statements about the incompatibility of intra-EU investment arbitration proceedings with EU law in *Komstroy* were "*obiter dicta* and . . . bind no-one," and that even if EU law did prohibit intra-EU arbitration under the ECT, Spain's offer to arbitrate would still remain valid under public international law).

[18] *See*, *e.g.*, *Green Power K/S and SCE Solar Don Benito APS* v. *Kingdom of Spain*, SCC Case No. V2016/135, Award (June 16, 2022), ¶ 445.

[19] *See, e.g.*, Damien Charlotin, INVESTMENT ARBITRATION REPORTER, *Swedish Supreme Court Sets Aside PL Holdings v. Poland, Relying on the CJEU's Assessment of the Case to Ground a Breach of Public Policy* (Dec. 14, 2022), https://www.iareporter.com/articles/swedish-supreme-court-sets-aside-pl-holdings-v-poland-intra-eu-award-relying-on-the-cjeus-assessment-of-the-case-to-ground-a-breach-of-public-policy/ (Swedish Supreme Court finding that the preliminary ruling it had sought from the CJEU was binding).

[20] *See Blasket Renewable Inv., LLC* v. *Kingdom of Spain*, No. 21-CV-3249, 2023 WL 2682013 (D.D.C. Mar. 29, 2023).

[21] *See Nextera Energy Glob. Holdings B.V.* v. *Kingdom of Spain*, No. 19-CV-01618, 2023 WL 2016932 (D.D.C. Feb. 15, 2023). The case is currently on appeal before the Court of Appeals for the District of Columbia Circuit. The European Commission and the Netherlands have filed *amici* submissions in support of Spain's position, invoking international comity and deference to sovereignty. Three *amici* submissions in support of the investors' position are expected to be

filed by international arbitration scholars, the U.S. Chamber of Commerce, and MOL Hungarian Oil and Gas Plc to address the "public international law obligations of Contracting States" under the ICSID Convention. *See* Erik Brouwe, INVESTMENT ARBITRATION REPORTER, *Christoph Schreuer and other investment arbitration experts to file amicus brief before US court in support of enforcement of intra-EU ICSID awards, alongside US Chamber of Commerce and MOL Hungarian Oil* (June 27, 2023), https://www.iareporter.com/articles/christoph-schreuer-and-other-investment-arbitration-experts-to-file-amicus-brief-before-us-court-in-support-of-enforcement-of-intra-eu-icsid-awards-alongside-us-chamber-of-commerce-and-mol-hungarian/. Similarly, an Australian court recently enforced an ICSID award against Spain and rejected Spain's attempts to invoke *Komstroy*, holding that Spain consented to "the consequences of an award" when it entered into the ICSID Convention. *See Kingdom of Spain v. Infrastructure Services Luxembourg S.à.r.l.* [2023] HCA 11.

22 *See* Julian Scheu and Petyo Nikolov, "Jurisdiction of Tribunals to Settle Intra-EU Investment Treaty Disputes," in ICSID REVIEW – FOREIGN INVESTMENT LAW JOURNAL (Oxford University Press 2021, Volume 36, Issue 1) (concluding that ICSID tribunals and those seated outside the EU remain competent to settle intra-EU investment disputes, whereas *Achmea* renders arbitration clauses contained in intra-EU investment treaties inoperable if the tribunal is seated within the EU); *see also* Caroline Simson, LAW360, *Judge Won't Confirm $29M Renewable Award Against Spain* (Mar. 30, 2023), https://www.law360.com/articles/1591652/judge-won-t-confirm-29m-renewable-award-against-spain ("It's generally considered more difficult for countries to resist enforcement of ICSID awards in the U.S. because they fall under a different enforcement regime."). *See generally Noble Energy Inc. et al.* v. *Republic of Ecuador et al.*, ICSID Case No. ARB/05/12, Decision on Jurisdiction (Mar. 5, 2008), ¶ 228 ("[U]nlike in other types of arbitration, the place of arbitration in ICSID proceedings carries no legal consequences as the ICSID system is self-contained. In particular, the choice of the place of arbitration does not trigger the application of the local arbitration law nor create jurisdiction of the local courts in aid and control of arbitration.").

23 *See* ENERGY CHARTER SECRETARIAT, *Public Communication Explaining the Main Changes Contained in the Agreement in Principle* (June 24, 2022), https://www.energychartertreaty.org/modernisation-of-the-treaty/; COUNCIL OF THE EUROPEAN UNION, GENERAL SECRETARIAT, *Energy Charter Treaty Modernisation*, WK 9218/2022 INIT (June 27, 2022), https://www.bilaterals.org/IMG/pdf/reformed_ect_text.pdf.

24 Pursuant to this "flexibility mechanism," the EU and the UK have proposed to shorten the ECT's 20-year sunset period to 10 years for fossil fuel-related investments made before August 15, 2023, and to exclude from investor protection any fossil fuel-related investments made after that date in their territories.

25 These trends include narrowing the definitions of what constitutes a qualifying investor or investment; limiting the scope or content of the "fair and equitable treatment" standard or the definition of indirect expropriation; reinforcing denial of benefits, essential security interests, and regulatory interest clauses; and shortening sunset clauses.

26 *See, e.g.*, Singapore-Australia investment agreement under negotiation (aimed at "transitioning to greener economies and addressing the challenges of climate change"); *see further* DEP'T OF FOREIGN AFFAIRS AND TRADE, *Singapore-Australia Green Economy Agreement: Propelling Our Sustainable Future*, https://www.dfat.gov.au/geo/singapore/singapore-australia-green-economy-agreement/singapore-australia-green-economy-agreement-propelling-our-sustainable-future.

27 *See, e.g.*, Morocco-Nigeria BIT (2016), https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5409/download (expressly providing that investors comply with international, and not just domestic, environmental protection and labor law standards); *see further* Klentiana Mahumutaj, EJIL: TALK, *Will the Morocco-Nigeria Bilateral Investment Treaty Transform Sustainable Development into Hard Law?* (Jan. 27, 2022), https://www.ejiltalk.org/will-

ENDNOTES (CONTINUED)

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[28] *See, e.g.*, *The United States-Australia Free Trade Agreement*, ANNEX 11-B, Clause 4(b), https://tcc.export.gov/static/AFTA.full_text.pdf; *The United States-Korea Free Trade Agreement*, ANNEX 11-B, Clause 3(b), https://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/korusfta/Investment.pdf; *Treaty between the United States of America and the Oriental Republic of Uruguay Concerning the Encouragement and Reciprocal Protection of Investment*, Article 12.2, https://tcc.export.gov/static/Uruguay-11.4.05.pdf.

[29] *See, e.g.*, *Recommendation 001/2018 of 26 September 2018 of the CETA Joint Committee on Trade, Climate Action and the Paris Agreement*, https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/rec-001.aspx?lang=eng; *Joint Activity Report to the CETA Joint Committee – First 18 Months of the CETA Joint Committee Recommendation on Trade, Climate Action and the Paris Agreement*, https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/2020-report-activ-rapport.aspx?lang=eng.

[30] For example, as the Energy Charter Secretary-General pointed out in a recent letter to the European Parliament, EU member states have entered into around 1500 BITs that protect fossil fuel investments and provide for investor-state arbitration. *See* ENERGY CHARTER SECRETARIAT, *Letter from Energy Charter Secretary-General to President of European Parliament* (Feb. 13, 2023), https://www.energycharter.org/fileadmin/DocumentsMedia/News/0047-SG-13022023-EP_President.pdf.

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