

POLICY BRIEF

Europe Must Address ISDS as a systemic barrier to a Just Transition

Investor–State Dispute Settlement (ISDS) creates a systemic barrier to a just transition, including many aspects of the transition away from fossil fuels. Current discussions around fossil fuel phase-out create a key opportunity to make progress on addressing this barrier. Civil society organisations are calling on European governments to explore and act on collectively disengaging from ISDS.

1) ISDS as a barrier to a just transition

Investor-State Dispute Settlement is a provision in investment treaties that allows investors to sue countries for measures they claim harm their expected profits. These cases are brought before private tribunals, often in response to government policies enacted in the public interest. Such policies may include actions taken to meet climate goals, such as ending fossil fuel production or limiting exploration permits.

Beyond climate goals, ISDS creates a serious constraint on national sovereignty and the policy space that countries need to address the wide range of challenges that come with growing geopolitical uncertainty. Of the \$114 billion¹ in public funds known to have been paid to investors through ISDS cases, the majority—more than \$87 billion—has gone to companies in the fossil fuel sector. ISDS awards can reach into the billions and represent a significant portion of national budgets, particularly in lower-income countries. This places added strain on public finances and weakens governments' ability to address other urgent priorities, such as climate change adaptation.

Cases faced by European countries include:

- British oil company Rockhopper sued Italy² and was awarded more than six times what it invested after Italy banned oil drilling near the coast following public outrage.
- The Swiss energy company AET is suing Germany over the closure of a coal power station as part of Germany's coal phase-out, asking for more than three times what it invested³.
- The UK faces a claim from an investor in a proposed coal mine that was cancelled after a British High Court ruled against it on climate grounds⁴.

¹ <https://www.globalisdstracker.org/database/>

² <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/800/rockhopper-v-italy> The award was annulled (because of the failure of one of the tribunal judges to disclose previous involvement in criminal proceedings), following which Rockhopper were able to cash in on annulment insurance, and has resubmitted its claim in September 2025.

³ <https://www.bilaterals.org/?aet-vs-germany-jeopardising-coal>

⁴ <https://www.bbc.com/news/articles/c9391205znwo>

- The Jersey-registered private equity firm Klesch is suing the EU, Germany and Denmark over the windfall tax on excess energy company profits introduced after the energy price spike in 2022⁵.

The amounts paid out in fossil fuel ISDS cases are, on average, much higher (over \$600 million) than awards in ISDS overall (\$126 million). Once tribunals issue such awards, they are enforceable almost anywhere in the world, giving investors a means to claim payment even if a country resists enforcement. ISDS thus poses a major barrier to countries' policy and fiscal space to reduce or eliminate fossil fuel production, consumption, licensing and subsidies in line with their international legal obligations. ISDS also obstructs a just transition by allowing fossil fuel companies to challenge liability for extraction-related social and environmental harms, evade accountability for legacy pollution, and block enforcement of corporate responsibility measures or court rulings. In this way, ISDS directly undermines a just and responsible phase-out of fossil fuels. The fossil fuel and mining sectors have the largest share of cases, with recent years showing an increase in claims arising from investments in minerals considered 'critical' for the green transition.

The problem goes deeper than a financial burden. ISDS can also often have a 'chilling' effect on policy-making, when the threat of ISDS cases deters governments from taking action, including on implementing policies to meet international climate obligations. Such threats have been linked to government decisions to backtrack on ambitious climate policies⁶, (Vermillion, France), the Danish government's decision not to collect tax from a fossil fuel investor (Klesch v EU, Denmark and Germany) and have been used by fossil fuel investors to leverage disproportionate financial payouts from governments over fossil fuel phase out measures (lignite coal, Germany). Government officials in Denmark⁷ and New Zealand⁸ have previously publicly admitted that their countries' membership of treaties with ISDS has held back those countries from adopting more ambitious climate policies

Multiple UN bodies have raised fundamental concerns over ISDS, including the 2022 IPCC report⁹ and reports by UN Special Rapporteurs, as well as hundreds of economic and legal experts and civil society organisations. The International Court of Justice's Advisory Opinion in 2025 has emphasised that investment treaties must be interpreted in harmony with international climate law.

European countries are prominent as home states of investors taking ISDS claims. European countries - the UK, Netherlands, Germany, France, and Spain among them - account for a disproportionate share of the treaties, cases (as a home state) and climate risk arising from ISDS as a whole¹⁰. Those same countries have also faced ISDS claims reaching into the millions and billions over climate and other measures. European involvement in the ISDS system thus has the impact of thwarting more ambitious climate action in Europe and across the globe.

2) What governments can do about it - as well as examples of countries that have taken action on ISDS

Many countries, including economies well integrated into global value chains, do not have investment treaty networks. There is no evidence to suggest that ISDS is necessary to attract foreign direct investment. A 2020 meta-analysis found "robust evidence that the effect of international investment

⁵ <https://10isdsstories.org/case/case-2/>

⁶ See [note](#) on regulatory chill in the context of the ECT and investment treaties.

⁷ <https://www.berlingske.dk/politik/flertal-stopper-ny-oliejagt-i-nordsoeen-i-2050>

⁸ <https://www.capitalmonitor.ai/analysis/cop26-ambitions-at-risk-from-energy-charter-treaty-lawsuits/>

⁹ [IPCC Working Group 3: Climate Change 2022 Mitigation of Climate Change Report: p. 1499](#)

¹⁰ European ISDS Scorecard: A ranking of the harmful effects of 30 countries' investment treaties, PowerShift, forthcoming

agreements [on FDI] is so small as to be considered zero.”¹¹ As such, ISDS creates a significant financial risk and drastically limits policy space for no tangible benefit.

Growing numbers of states are demonstrating that withdrawal from ISDS is feasible. EU member states cancelled their mutual investment treaties. Many EU countries, along with the UK, Iceland and Norway, have exited or are withdrawing from the Energy Charter Treaty, the most used treaty for ISDS claims. The European Commission is urging EU countries that remain parties to the Energy Charter Treaty (ECT) to exit the Treaty without delay.

In 2022, Australia adopted a national policy committing to exclude ISDS in any new treaties and pursue reform of existing ISDS mechanisms. Australia is currently pursuing the renegotiation of treaties with ISDS with a number of European countries. South Africa, India, Indonesia, Ecuador, Tanzania, Bolivia, and New Zealand have all taken steps to move away from ISDS. In March 2026, President Petro of Colombia, the host of the 2026 Santa Marta Conference, announced that Colombia will leave the international arbitration system¹².

These are important developments, but there remains much to do. Many treaties remain untouched, and offer corporations the chance to raise the cost of or stall progress on the just transition in the name of profit. Countries can and should pursue the cancellation of their bilateral investment treaties with ISDS. However, given that ISDS is included in around 2500 investment treaties globally, coordination among states to pursue treaty termination would prove a faster, more efficient and effective solution.

Coordinated action on ISDS could also help neutralise the effects of ‘**sunset clauses**’. Sunset clauses are terms written into treaties that state that the terms of the treaty can remain in place for a period of time after a party to a treaty leaves - often between 5 and 20 years. This can mean that investors are able to sue countries long after a country has exited a treaty, continuing to undermine states’ regulatory capacity. Several cases currently underway against European countries are being taken using the ECT despite those countries having already formalised their exit. If countries mutually agree to terminate their treaties and neutralise the sunset clauses, this scenario can be avoided.

3) Outlining a model for collective disengagement - an ISDS-Free Alliance

Currently, there is no forum where states can collectively address their concerns about the barriers that ISDS creates to climate action. (Discussions on reform within UNCITRAL¹³ Working Group iii, and the OECD¹⁴ are insufficiently ambitious in their scope and timelines, while the structural barriers for Global South countries, which face the majority of ISDS claims, to participation in UNCITRAL proceedings have been observed¹⁵.) The initiative for the “First Conference on Transitioning Away from Fossil Fuels” in Colombia in April 2026, and the Brazilian Presidencies COP Transitioning Away from Fossil Fuels (TAFF) Roadmap create important opportunities to develop a consensus and generate momentum towards collective action to terminate or exit treaties with ISDS. The Conference is an ideal forum to launch a coalition of governments to explore collective disengagement from ISDS, and to neutralise the impact of sunset clauses.

Cancelling or exiting treaties with ISDS, while neutralising sunset clauses, is the only effective way of dealing with the risk of ISDS. Civil society organisations and academics are calling on governments to

¹¹ <https://onlinelibrary.wiley.com/doi/10.1111/joes.12392>

¹² [Colombia saldrá del régimen de arbitraje internacional de inversión: presidente Petro](https://www.colombia.com.co/colombia-saldr%C3%A1-del-r%C3%A9gimen-de-arbitraje-internacional-de-inversi%C3%B3n-presidente-petro)

¹³ The United Nations Commission on International Trade Law

¹⁴ <https://www.oecd.org/en/topics/sub-issues/the-future-of-investment-treaties.html>

¹⁵ Ladan Mehranvar, Lea Di Salvatore, [Structural Barriers and Power Dynamics in UNCITRAL WGIII: Upholding the Status Quo?](#), 2025

begin building a coalition of governments committed to freeing themselves from all forms of ISDS. A group of countries working together could launch a coalition to explore bilaterally cancelling treaties or renegotiating to remove ISDS, to develop *inter se* agreements to neutralise sunset clauses, and negotiate collectively to remove ISDS or cancel agreements with other countries.

Members of such a coalition could be expected to;

1. Commit to not signing any new ISDS agreements
2. Cancel treaties with ISDS, or renegotiate treaties to remove ISDS, between the governments involved, in ways that address 'sunset clauses'
3. Engage with other (non-member) countries to support further potential for stepping away from ISDS
4. Including provisions on cancelling ISDS in a future Fossil Fuel Treaty
5. Initiate discussions for a multilateral treaty to bring about a world free from ISDS

The role of Europe

European countries are among those with the deepest involvement in the ISDS system, and where action to address ISDS is most urgently needed. Today, a number of European countries have also voiced strong support for phasing out fossil fuels and taken steps to move away from ISDS by exiting the Energy Charter Treaty. It is time to recognise the inconsistency between a dense ISDS regime and a commitment to a just transition - and to act decisively to dismantle ISDS.

In addition to the recommendations above, first movers in Europe can take a leading role by:

- Encouraging broad and high-level participation in conferences aiming to Transition Away from Fossil Fuels, and the ISDS discussions to be held there among fellow European countries;
- Supporting the development of an EU position and fossil fuel phaseout roadmap that includes a commitment to disengage from all forms of ISDS;
- Accept cancellation of treaties on a mutual basis where it is requested by treaty partners in a timely manner
- To withdraw from the ECT if still a member, and for all countries that have withdrawn to start developing an *inter se* agreement between EU and non-EU countries to neutralise the ECT's sunset clause.

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