

Fact Sheet

Energy Charter Treaty

General information

The Energy Charter Treaty (ECT) is an energy sector trade and investment agreement that created a multilateral framework for energy cooperation for the countries adhering to it. Signed in Lisbon, Portugal in December 1994, the legally binding treaty “establishes a legal framework in order to promote long-term cooperation in the energy field”. As energy investments are long-term and capital intensive, the States which are parties to the ECT are obliged, inter alia, to “encourage and create stable, equitable, favourable and transparent conditions for Investors”.

Today, fifty-two European and Asian countries and the EU itself (the “Contracting Parties”) have signed or acceded to the ECT. The ECT covers all commercial aspects of the energy industry, including trade, transit, investments and energy efficiency, and provides dispute resolution procedures as well.

ECT’s focus areas:

- Protection of foreign investments against key non-commercial risks
- Non-discriminatory conditions for trade based on WTO rules and provisions to ensure the reliable flow of energy across borders through pipelines, grids etc.
- Promotion of energy efficiency as well as minimising the environmental impact of energy production and use
- Mechanisms to resolve disputes between participating states and between investors and host-states

Dispute resolution procedures

There are two basic forms of binding dispute settlement in the ECT: First, state-state arbitration on the interpretation or application of the Treaty’s provisions (except for competition and environmental issues). Second, investor-state-arbitration for disputes relating to investments. Additional provisions exist on the resolution of inter-state trade issues based on the WTO model as well as a conciliation procedure for transit disputes.

The ECT lists three institutes as potential arbitration organisations:

- International Centre for the Settlement of Investment Disputes (ICSID) – an autonomous international institution, which is an arm of the World Bank
- United Nations Commission on International Trade Law (UNCITRAL) – rules for a sole arbitrator or an ad hoc arbitration tribunal
- The Arbitration Rules of the Stockholm Chamber of Commerce

International arbitral awards are final and binding and must be carried out without delay. All Contracting Parties are compelled to make provision for the effective enforcement of awards in their territory.

The European Commission has argued that investor state dispute settlement does not apply to disputes between an Investor from one EU Member State and another EU Member State. Most Member states disagree and so do arbitral tribunals and e.g. also the German Federal Supreme Court (in a recent decision asking the European Court of Justice for guidance on a specific case).

Institutions

The ECT created an international organization, the Energy Charter Conference. Each Contracting Party is allowed one representative and the Conference meets regularly. The Charter Conference is assisted by a Brussels-based secretariat, headed by a Secretary General appointed by the Conference.

Cases of investor-state and state-state arbitration:

There are currently over eighty cases brought by investors for international arbitration that the Energy Charter Secretariat is aware of. All cases can be found [here](#).

Examples are:

- Both the municipal utility of Munich and Steag, which is owned by the Rhein-Ruhr consortium of municipal utilities, have filed cases at ICSID in 2015 against Spain over amendments to the country's renewable energy legislation that negatively affected their investments.
- Vattenfall filed a litigation in 2012 against Germany in order to demand compensation for the closure of two nuclear power plants in the context of the German government's decision to phase-out nuclear energy

Find further information on the Energy Charter Secretariat's website: <http://www.energycharter.org/>