

## Letter from climate scientists to EU leaders on the IPCC climate mitigation report findings related to the Energy Charter Treaty

Dear President Macron

Dear President of the European Council

Dear President of the European Commission

Dear Heads of States and Governments

We would like to draw your attention an important loophole identified in the most recent IPCC (Intergovernmental Panel of Experts on Climate Change) report on climate change mitigation which will hinder the EU Green Deal and climate neutrality target if you do not act now.

The IPCC report concluded that:

***“Trade rules have the potential to stimulate international adoption of mitigation technologies and policies, but may also limit countries’ ability to adopt trade-related climate policies”***

IPCC, 2022, Summary for Policy Makers, Section E6.4, page 52

***“A large number of bilateral and multilateral agreements, including the 1994 Energy Charter Treaty<sup>1</sup>, include provisions for using a system of investor-state dispute settlement (ISDS) designed to protect the interests of investors in energy projects from national policies that could lead their assets to be stranded. Numerous scholars have pointed to ISDS being able to be used by fossil-fuel companies to block national legislation aimed at phasing out the use of their assets”***

IPCC, 2022, Chapter 14 on international collaboration, Lines 9 to 14, page 81

***“Projected cumulative future CO<sub>2</sub> emissions over the lifetime of existing and currently planned fossil fuel infrastructure without additional abatement exceed the total cumulative net CO<sub>2</sub> emissions in pathways that limit warming to 1.5°C (>50%) with no or limited overshoot.”***

IPCC, 2022, Summary for Policy Makers, Section B7, page 20

While you will be meeting for the last time under the leadership of the French Presidency, there will be a parallel meeting hosted by the European Commission on the Energy Charter Treaty (ECT). The aim of this meeting is to reach an agreement in principle on the changes proposed to modernise the ECT.

In the case of EU countries, ***the so-called flexibility mechanism, that will be agreed on June 24 unless you decide otherwise***, will maintain the protection of existing foreign investment in fossil fuels until 2030 and in gas power plants until 2040<sup>2</sup>.

As shown by the IPCC report, pathways that give us a 50% chance to limit global warming to 1.5°C by the end of the century require a premature closure of existing and currently planned fossil fuel

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<sup>1</sup> The Energy Charter Treaty from the nineties is a multilateral trade agreement which protects foreign investment in energy supply by means of private arbitration. The EU and its Member States, except Italy are all parties to the ECT. As of today, there are 150 known Investor-State-Dispute-Settlement (ISDS) claims under the ECT. It is likely that more ISDS claims will be launched in the future against EU countries as they are leading in the phase out of fossil fuel infrastructures and changing subsidies to renewable investment to align them with the drastic decrease of the cost of such installations.

<sup>2</sup> The threshold of 380gCO<sub>2</sub>/kWh considered by the EU in the flexibility mechanism is above the one in the EIB energy lending policy and the proposed one for the delegated act of the EU taxonomy.

infrastructure. If this is not done, cumulative future CO<sub>2</sub> emissions will be above the remaining carbon budget for the 1.5°C target.

By maintaining in the *modernised* ECT the protection of foreign investment in existing fossil fuels, EU countries will have to choose between keeping the existing fossil fuel infrastructure running until the end of their lifetimes or facing new ISDS claims. Both options will jeopardise the EU climate neutrality target and the EU Green deal.

In these days of climate and energy struggles, the EU climate leadership is more than ever needed to *“make our planet great again”*.

We call on the French Presidency to work on the withdrawal of EU countries from the Energy Charter Treaty.

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