E3G

JULY 2024

EXECUTIVE SUMMARY: INVESTMENT TREATIES ARE UNDERMINING THE GLOBAL ENERGY TRANSITION[1]

MAPPING THE GLOBAL COVERAGE OF ISDS-PROTECTED FOSSIL FUEL ASSETS

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Investment treaties with investor–state dispute settlement (ISDS) provisions protect fossil fuel investments. They are misaligned with the international efforts to achieve net zero greenhouse gas emissions. Countries with climate ambition need to lead the reform of investment treaties to eliminate the risk that ISDS poses to the global energy transition.

Some of the wealthiest industrialised countries, including members of the G7, have been at the forefront of international efforts to accelerate the global energy transition. Those efforts include the Clean Energy Transition Partnership (CETP), the Beyond Oil & Gas Alliance (BOGA), and the Powering Past Coal Alliance (PPCA). In addition, 198 countries agreed to transition away from fossil fuels in energy systems and set renewable capacity and energy efficiency targets at COP28 last year. Finance will be the focus of COP29 later this year, where discussions will centre around how much money is needed for climate action in developing countries and how to fund this.

However, investment treaties with ISDS are misaligned with these international efforts and continue to be overlooked in broader climate finance discussions despite protecting fossil fuel investments at no cost.[2] ISDS allows foreign investors to bring claims against host governments in international arbitration

[1] This is an executive summary of the report of the same name, available from E3G, July 2024, **Investment treaties are undermining the global energy transition**

[2] According to UN Trade and Development (UNCTAD), 2,584 stand-alone bilateral investment treaties (BITs) or investment chapters in free trade agreements were in force globally as of 2022. Most of these treaties have ISDS provisions and protect foreign investment, including investment in fossil fuels. See UNCTAD, 2023, **World Investment Report**.

tribunals if measures introduced by those governments undermine their business interests – even if the measures are in the public interest.

ISDS is particularly relevant to addressing the climate crisis due to the protection given to fossil fuel investments. Historically, the fossil fuel industry has benefitted the most from the ISDS mechanism, having won at least $82.8 billion in publicly known cases.[3] ISDS poses a risk to the global energy transition by delaying ambitious climate measures, raising the costs of climate action, reducing the fiscal space to respond to climate change, and encouraging further investments in fossil fuels.

Our analysis shows which countries are most responsible for ISDS-protected greenhouse gas emissions and highlights the misalignment between countries' use of investment treaties and their climate commitments. We mapped the global coverage of ISDS-protected fossil fuel assets and their associated emissions, by identifying oil and gas fields, coal mines, and coal-, oil- and gas-fired power plants that are protected by treaties that include ISDS. We also identified which countries are most vulnerable to compensation claims from fossil fuel investors.

Key findings

Globally, investment treaties protect fossil fuel assets with the potential to collectively emit up to around 2 gigatonnes (Gt) CO_2e annually.[4] This is 58% of the emissions created by all of the continent of Europe's fossil fuel operations in 2022.[5]

Parent companies headquartered in the G7 are responsible for 50% (1 Gt CO_2e) of the total figure (Figure 1). This equals over 40% of the G7's greenhouse gas emissions from electricity generation in 2022.

[3] IIED and CCSI, 2023, **Investor-state dispute settlements: a hidden handbrake on climate action**

[4] Our analysis includes both fossil fuel assets currently in operation and those that will operate in the future. Emissions figures quoted are totals across all these assets, and therefore represent the potential annual emissions if all these assets were operational.

[5] Fossil fuel operations include coal mining, oil and gas production and operation, oil and gas refining and solid fuel transformation but do not include electricity generation.

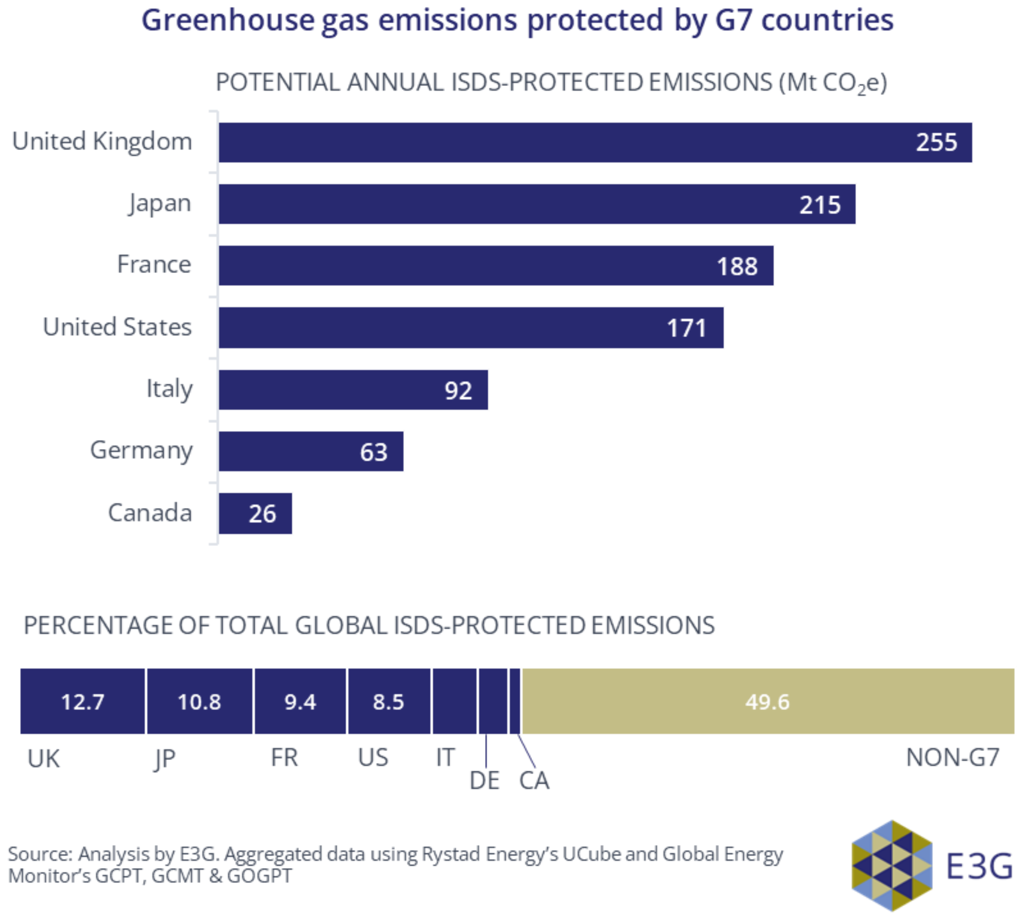

Figure 1: G7 countries protect 50% of the total potential annual greenhouse gas emissions covered by treaties with ISDS. Among these, companies based in the UK, Japan, France and the US are responsible for the largest amounts of emissions.

Other key findings include:

> The United Kingdom protects more potential annual greenhouse gas emissions than any other country: 255 megatonnes (Mt) CO_2e. That is 3.8 times the greenhouse gas emissions resulting from all UK domestic fossil fuel operations in 2022.

> Six of the top 15 countries that protect most overseas greenhouse gas emissions via ISDS have joined the Clean Energy Transition Partnership (CETP).[6] CETP members committed to end new export finance support for overseas fossil fuel projects. However, they continue to protect investor

[6] At COP26 in 2021, 34 countries and five public institutions committed to end new direct public finance support for overseas fossil fuel projects, such as export finance, by signing the Glasgow Statement.

interests in overseas fossil fuel investments through ISDS, undermining the global transition away from fossil fuels.

> Spain and France – core members of BOGA – together protect 165 Mt CO_2e from ISDS-covered oil and gas fields. This is 3.3 times the greenhouse gas emissions that the two countries emitted domestically in 2022 in all fossil fuel operations. Despite being core members of the BOGA, they are slowing down the energy transition of other oil- and gas-producing countries via treaty-based investment protection.

> Egypt and Nigeria are at the highest risk of ISDS claims. Colombia (a friend of BOGA) and Indonesia (supported through a Just Energy Transition Partnership) are also highly exposed to ISDS risk, which means ISDS can get in the way of their transition efforts.

Recommendations

Efforts to phase out fossil fuels and redirect international financial flows to net zero ambitions will have a limited impact if investment treaties are not tackled. Countries with climate ambition need to lead on investment treaty reform to remove the financial protection offered to fossil fuel assets.

However, those countries are still far from taking concrete actions. Even countries that have already withdrawn or decided to withdraw from the Energy Charter Treaty (ECT) have yet to seriously consider reforming other investment treaties. Investment treaty reform has been under discussion, from different perspectives, through multilateral organisations such as the OECD, United Nations Commission on International Trade Law (UNCITRAL) and UN Trade and Development (UNCTAD). However, these discussions are not moving fast enough to address the climate urgency.

If the members of the G7 or climate initiatives such as CETP and BOGA are serious about honouring their climate commitments, they need to act on investment treaties. Countries withdrawing from the Energy Charter Treaty can ensure consistency in their climate ambition by tackling other investment treaties.

We recommend that those countries:

> Recognise that the current investment treaty regime is incompatible with the global energy transition and consider options for investment treaty reform.

> Pursue plurilateral action by collectively agreeing a reform option that can address the incompatibility between the investment treaty regime and climate action.

> Integrate the investment treaty reform agenda into wider climate discussions in multilateral fora such as the G7, G20, and UNFCCC processes.

E3G worked with Tord Lauvland Bjørnevik at WWF-Norway to analyse upstream oil and gas extraction. The background, methodology, analysis of power plants and coal mines, findings, and recommendations of the report were led by E3G and reflect its views alone.

About E3G

E3G is an independent climate change think tank with a global outlook. We work on the frontier of the climate landscape, tackling the barriers and advancing the solutions to a safe climate. Our goal is to translate climate politics, economics and policies into action.

E3G builds broad-based coalitions to deliver a safe climate, working closely with like-minded partners in government, politics, civil society, science, the media, public interest foundations and elsewhere to leverage change.

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