

## Rockhopper v Italy award now public

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08 November 2022



A high-profile Energy Charter Treaty award requiring Italy to pay €190 million plus interest to a UK oil and gas company over a ban on offshore drilling is now publicly available.

GAR readers can access the award in favour of London-listed Rockhopper Exploration [here](#). Our analysis of the award can be [found here](#).

A tribunal consisting of **Klaus Reichert SC** as chair, **Charles Poncet** and **Pierre-Marie Dupuy** issued the award, finding Italy committed an unlawful expropriation when it refused to grant a production concession for the Ombrina Mare oilfield near the country's Adriatic coast. The state had relied on an environmental law banning exploration and production activities within 12 miles of the country's coastline.

The award is accompanied by a separate opinion from Dupuy. Also appended is a December 2021 decision in which the tribunal refused Italy's request to reconsider its jurisdiction in light of the European Court of Justice's ruling in *Komstroy* that the ECT does not allow arbitration of intra-EU investment disputes. The case was treated as an intra-EU dispute as the UK was still part of the EU when Rockhopper launched the arbitration.

Italy has since [applied to ICSID](#) to annul the award, on grounds that have yet to be disclosed.

The award has only heightened the controversy over the ECT and its protections for fossil fuel investments. In the months since it was issued, [Poland](#), [Spain](#), [the Netherlands](#) and [France](#) have all announced they intend to withdraw from the ECT, in most cases citing the treaty's incompatibility with obligations under the Paris Climate Accords as a primary consideration.

The ECT's contracting parties are due to vote later this month on a modernised version of the treaty that provides an option for them to withdraw protections for fossil fuel investments in their territory.

Italy already withdrew from the ECT in 2015 but remains bound by the treaty for another 20 years under its sunset clause.

The Energy Charter Secretariat [issued a warning](#) last week that terminating the ECT's sunset clause may not be as easy as some states and commentators would hope. In a short note, it observed that the Vienna Convention on the Law of Treaties allows states to terminate or withdraw from a treaty due to unforeseen “fundamental changes of circumstances”, but says this rule may only be invoked in exceptional circumstances.

## Documents

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Rockhopper v Italy Award



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