

9th Annual Conference on Investment Treaties

Supporting the global energy transition

Methods to align investment
treaties with the Paris Agreement
and Net Zero

Background for the Conference

11 March 2024, 9:30 am – 6 pm (Paris time)
OECD Conference Centre
Paris, France

■ Background for the Conference

■ The Paris Agreement, COP28 and the Global Stocktake

The first Global Stocktake under the 2015 Paris Agreement concluded at COP28 in December 2023 after intensive work and negotiations.¹ It gave the world an opportunity to assess progress on Paris Agreement goals and to align on efforts to bridge gaps. Challenges in agreeing on a final text for the Stocktake extended the Conference past the deadline.

The main sticking point in the negotiations over the final agreement was over fossil fuel phaseouts. In a Joint Statement of the Organisation of African, Caribbean and Pacific States and the European Union for COP 28, over 100 countries sought commitments to the phase out of fossil fuels.² Similarly, the High Ambition Coalition 2023 Leaders' Statement, first published in September 2023 and updated in December, called for a phase out of fossil fuels.³ US and Chinese views also appeared to evolve towards greater support or acceptance of a phase out.⁴ Ahead of COP28, 200+ companies representing over \$1.5 trillion in global annual revenue urged national governments to address fossil fuels as the primary cause of climate change.⁵ Many climate scientists and civil society organisations added their support.

At the COP, there were strong objections to an initial draft of the Stocktake document omitting any calls or commitments to a fossil fuel phaseout. The ultimate compromise was a call for "transitioning away from fossil fuels in energy systems." Australian Climate Change and Energy Minister Chris Bowen, speaking on behalf

¹ See [Outcome of the first global stocktake](#), Proposal by the President, Draft decision - /CMA.5, FCCC/PA/CMA/2023/L.17 (13 Dec. 2023) (revised advance version) (hereinafter "Global Stocktake").

² See [Joint Statement of the Organisation of African, Caribbean and Pacific States and the European Union for COP 28](#) (30 November 2023).

³ See [High Ambition Coalition 2023 Leaders' Statement](#) (first published on 19 Sept. 2023, with updates on 1 Dec. 2023). The Statement was signed by Leaders from Austria, Barbados, Belgium, Chile, Colombia, Denmark, the Federated States of Micronesia, Fiji, Finland, France, Guatemala, Iceland, Ireland, Kenya, the Marshall Islands, Monaco, New Zealand, the Netherlands, Palau, Saint Lucia, Samoa, Slovenia, Spain, Sweden, Tuvalu and Vanuatu.

⁴ See Lisa Friedman, [U.S. Supports 'Largely' Phasing Out Fossil Fuels, John Kerry Says at Climate Summit](#), New York Times (6 Dec. 2023); Matthieu Goar, [COP28: China proves a key player in possible fossil fuel phase-out](#), Le Monde (11 Dec. 2023) (noting that China's lead negotiator had stated that he did not rule out the idea of a fossil fuel phase-out).

⁵ See Fossil to Clean, COP28: Businesses Urge Governments To Phase Out Fossil Fuels, <https://www.wemeanbusinesscoalition.org/cop28-businesses-urge-governments-to-phase-out-fossil-fuels/>

of the Umbrella Group of countries⁶, said the consensus did not go as far as some countries wanted but sent a clear signal that most of the world acknowledged “the reality that our future is in clean energy and the age of fossil fuels will end”.⁷

The language on transitioning away from fossil fuels is listed in eight efforts that the Parties to the Conference agreed to take in a nationally determined manner. Equally if not more important, the Stocktake also calls for tripling renewable energy capacity by 2030 and phasing out inefficient fossil fuel subsidies.⁸ It noted IPCC findings that there is sufficient global capital to close the global investment gap but there are barriers to redirecting capital to climate action; “Governments through public funding and clear signals to investors are key in reducing these barriers”.⁹

Many governments and analysts have underlined the close links between investment in renewables and fossil fuels given their substitutability. The International Energy Agency (IEA) has long described fossil fuel subsidies as a ‘roadblock’ on the pathway to clean energy systems.¹⁰ More broadly, long-term fossil fuel investment can lock governments into high carbon and dissuade the development of alternative energy sources. Conversely, “the cost and availability of renewable energies ... influences the substitution away from fossil fuels ...”¹¹ For example, in the November 2023 Sunnylands Statement on Enhancing Cooperation to Address the Climate Crisis, the US and China committed to “accelerate renewable energy deployment in their respective economies through 2030 from 2020 levels so as to accelerate the substitution for coal, oil and gas generation”.¹²

Action to limit support for or to dissuade fossil fuels thus encourages green investment and consumption, and effective action to encourage green dissuades fossil fuel investment and consumption. As the Global Stocktake recognises with its attention to both increasing renewables and transitioning away from fossil fuels, a

⁶ The Umbrella Group is a coalition of Parties to the UNFCCC which formed following the adoption of the Kyoto Protocol. The Group is made up of Australia, Canada, Iceland, Israel, Japan, Kazakhstan, New Zealand, Norway, Ukraine and the United States. The United Kingdom formally joined the group in 2023. See UNFCCC, [Party Groupings](#).

⁷ Adam Morton, [‘The age of fossil fuels will end’: Australia’s Chris Bowen hails Cop28 agreement](#), The Guardian (13 Dec. 2023).

⁸ Other key Stocktake commitments call for countries to contribute to accelerating efforts towards the phase-down of unabated coal power; accelerating developing low-emission technologies including nuclear, low-carbon hydrogen and carbon capture and storage; and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030. See Global Stocktake, para. 28.

⁹ Global Stocktake, para. 16(b).

¹⁰ See IEA, [Fossil Fuel Subsidies in Clean Energy Transitions: Time for a New Approach?](#)

¹¹ See Fabio Panetta, [Greener and cheaper: could the transition away from fossil fuels generate a divine coincidence?](#) (European Central Bank 16 Nov. 2022).

¹² See [Sunnylands Statement on Enhancing Cooperation to Address the Climate Crisis](#) (14 Nov. 2023).

smooth energy transition will require the adoption of renewable energy at a pace that is consistent with the move away from fossil fuels.

The Global Stocktake also recognizes both the importance of art. 2.1c of the Paris Agreement and the limited progress to date in aligning finance flows with climate goals. Further understanding of article 2.1c, including its complementarity with article 9, will be the object of enhanced dialogue.¹³ Governments have pointed to the critical importance of the alignment of finance. For example, the High Ambition Coalition 2023 Leaders' Statement underlined that "[a]ll financial flows need to contribute to a more just and equitable world, helping countries develop in a way that is aligned to 1.5 degrees and builds resilience to the impacts of the climate crisis ..."

While the Global Stocktake represents a step forward, it is widely recognised that it is insufficient to achieve the 1.5 degree and other key Paris goals. Madeleine Diouf Sarr, chair of the Least Developed Countries Group, stated that the Stocktake outcome "reflects the very lowest possible ambition that we could accept rather than what we know, according to the best available science, is necessary to urgently address the climate crisis."¹⁴ There is a critical and urgent need for concrete action.

The Global Stocktake and OECD work on investment treaty alignment

The Global Stocktake provides renewed impetus and urgency for OECD work on the Paris and net zero alignment of investment treaties.¹⁵ Paris alignment of investment treaties has emerged recently as an important component of climate policies. Attention to individual investment treaties has been accompanied by growing attention to the Paris alignment of the investment treaty regime as a whole. The regime has a broad reach into incentives for major investment decisions and their profitability, as well as into government policies and budgets. Many governments and other participants in OECD work on Paris and net zero alignment of investment treaties supported stronger climate commitments in the Global Stocktake.

Government recognition of the importance of Paris alignment of investment treaties is growing. In the recent first-ever [survey of climate policies for investment treaties](#), carried out by the OECD in 2023, the Paris alignment of existing investment treaties and investment treaty policies was described as very important (58%) or

¹³ Global Stocktake, paras. 90-92; see also UNFCCC, Report of Standing Committee on Finance, Synthesis of views regarding ways to achieve Article 2, paragraph 1(c), of the Paris Agreement, FCCC/CP/2023/2/Add.3-FCCC/PA/CMA/2023/8/Add.3 (noting attention to investment treaties in work on art. 2.1c).

¹⁴ See Simon Mundy, [A deal at last](#), Financial Times (13 Dec. 2023).

¹⁵ Work in this area constitutes "Track 1" of OECD work on the Future of investment treaties. See oe.cd/foit.

somewhat important (21%) by 79% of government respondents. Two OECD Investment Treaty Conferences ([2022](#); [2023](#)) have addressed alignment with the Paris Agreement and Net Zero in general terms; an OECD [public consultation on investment treaties and climate change](#) provided additional inputs. At the same time, claims in ISDS seeking large amounts in damages for government measures affecting fossil fuels or possible new fossil fuel investment continue to be regularly filed, increasing public attention to the climate impacts of investment treaties.

In a context of advances in the Global Stocktake, the November 2023 decision at the OECD to extend work on methods to effectively align investment treaty policies with the Paris Agreement goals is an important development. The need to develop techniques for alignment reflects not only the recognition that alignment is important, but also the additional survey finding that uncertainty about what to do could be the biggest challenge to alignment of investment treaties. The decision to extend the work in Track 1 should not be construed as government participants supporting any particular set of ideas under discussion. But it does reflect the importance of the issues, recognition of the value of work and exchanges to date, and strong support for continued work.

■ The 2024 Conference

The thematic sessions at the 2024 Conference will evaluate methods for alignment from three angles as described below following opening remarks and a general session devoted to COP28 and the energy transition. The ongoing Track 1 interest in climate policy developments in related sectors will also be addressed to provide additional relevant information about Paris and net zero alignment methods as inspiration.

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