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Phasing out ISDS in the Netherlands: A Roadmap

Pathways for ending Investor-State Dispute Settlement to strengthen policy space for a just transition | Policy briefing | April 2026

Key recommendations for Dutch policymakers and legislators

1. **Avoid new ISDS commitments**
   - Adopt a clear, cross-government policy to exclude ISDS from all new bilateral investment treaties and EU trade agreements.
   - Reconsider ongoing treaty negotiations and oppose the inclusion of ISDS or similar mechanisms.
   - Strengthen parliamentary scrutiny of new agreements to ensure alignment with climate and sustainable development goals.

2. **Terminate or amend existing investment treaties**
   - Systematically monitor and use upcoming termination windows to exit existing treaties.
   - Prioritise high-risk treaties, particularly those linked to fossil fuel investments or "treaty shopping" practices.
   - Where feasible, pursue mutual termination or amendment of treaties, including neutralisation of sunset clauses.
   - Explore interim options such as withdrawing advance consent to arbitration, where full termination is not immediately possible.

3. **Pursue coordinated multilateral solutions**
   - Work with like-minded countries to develop joint approaches to address ISDS.
   - Support multilateral instruments that allow for the coordinated termination of treaties and neutralisation of sunset clauses.
   - Use international platforms, including UN climate processes, to build a coalition aligned with the Paris Agreement.

4. **Avoid ISDS in contracts with companies**
   - Exclude arbitration clauses from new contracts with private investors and rely on domestic courts for dispute resolution.
   - Avoid stabilisation clauses that can lock in compensation rights or arbitration after treaty reform or termination.
   - Conduct a systematic review of existing contracts in key sectors and renegotiate where possible to remove arbitration and stabilisation clauses.
   - Ensure coherence between treaty policy and contracting practices to prevent overlapping and compounding legal risks.

Introduction

At a time when the Netherlands, like many countries, needs to accelerate its climate and environmental action to fulfil its human rights obligations, international legal rules designed to protect investors can constrain the ability to implement such actions. Under the *investor-state dispute settlement* (ISDS) mechanism, embedded in thousands of bilateral investment treaties (BITs), free trade agreements (FTAs) and investment contracts, foreign investors can bypass domestic courts and sue sovereign states directly before international arbitration, claiming compensation for measures allegedly harming their investments.

ISDS allows investors to challenge a wide range of public interest measures, including those related to climate, energy, national security, public health and environmental protection.[1] Awards can involve substantial compensation for alleged lost future profits, creating significant financial risks and regulatory pressure for governments.[2] As a result, ISDS can affect the design, timing and ambition of public policies, as governments may face legal uncertainty or potential liability when adopting necessary measures to meet climate, environmental and human rights obligations.[3]

The urgency of addressing these risks is evident in recent high-profile cases against the Netherlands. Shell and ExxonMobil have initiated arbitrations over the closure of the Groningen gas field, claiming billions in compensation for lost future profits while contesting their liability for decades of extraction-related damage.[4] Energy companies RWE and Uniper also sought billions in compensation for the planned phase-out of coal-fired power generation by 2030.[5] Although these latter cases were later withdrawn, they illustrate the potential financial and regulatory risks posed by ISDS to Dutch policy-making.

This roadmap is designed to support Dutch policymakers, legislators and other advocacy actors in identifying practical strategies to reduce exposure to ISDS risks. It provides a structured, legally sound, and politically legitimate set of options for safeguarding public policy space to fulfil climate, environmental and human rights objectives. While this document could be used as an inspiration for other countries and wider related campaigns, the roadmap has been specifically outlined for the context and conditions of the Netherlands. By translating existing legal research into actionable pathways, the roadmap shows that limiting or ending ISDS obligations does not require a radical break with international law.

The Netherlands in the global ISDS system

The Netherlands plays a central role in the global system of ISDS. It was the first country to include ISDS in an investment treaty, with its former colony, Indonesia, in 1968. Today, it maintains one of the largest networks of investment treaties globally, with 70 active BITs containing ISDS provisions. Dutch treaties are widely used: with 140 known treaty-based claims, they account for nearly 10 per cent of all ISDS cases worldwide, ranking the Netherlands second only to the United States.[6]

Dutch BITs provide exceptionally broad protection, often extending to holding companies and special purpose entities with little or no substantive economic activity in the Netherlands. Companies frequently route investments through Dutch entities to benefit from tax advantages, while simultaneously gaining access to the country's extensive and investor-friendly treaty network. Over 70 per cent of ISDS claims under Dutch treaties are brought by such "mailbox" entities, making the Netherlands a leading jurisdiction for "treaty shopping".[7]

In total, ISDS cases under Dutch treaties have resulted in approximately US$113 billion in compensation claims and around US$20 billion in government payouts. As such, Dutch treaties place significant pressure on public budgets, regulatory choices, and the ability of states, particularly in the Global South, to pursue policies in the public interest.

At the same time, the Netherlands itself has increasingly become a target of ISDS claims, illustrating that no state is immune to these risks.[8] The cases brought by Shell, ExxonMobil, RWE and Uniper show how ISDS can expose the Dutch government to substantial financial liability when implementing policies that protect the climate, environment, and public safety. In effect, the Netherlands is now experiencing what countries in the Global South have faced for decades: the threat of costly arbitration, regulatory pressure, and legal challenges to measures taken in the public interest.

The need for a coherent approach

In 2019, the Dutch government introduced a new model investment treaty, aimed at addressing growing criticism of its earlier treaties as overly broad and investor-friendly, as well as concerns about their impact on public policy space.[9] The new model includes, among other things, clearer legal standards and references to climate and sustainable development, and seeks to limit protection for "mailbox" companies. However, the core ISDS mechanism remains intact, and claims against climate and energy policies are not excluded. As a result, the continued protection for fossil fuel investments under the new model, potentially extending far into the future, remains in direct tension with the Paris Agreement, under which the Netherlands has committed to aligning financial flows with low-emission and climate-resilient development pathways.[10]

The Netherlands' current approach, focusing on concluding new treaties and gradually renegotiating existing ones based on the 2019 model, is both slow and insufficiently ambitious. Without a clear strategy for existing treaties, climate and sustainable development policies both in the Netherlands and abroad remain vulnerable to ISDS risks. As such, Dutch treaties continue to affect democratic

governance, as key public decisions on climate, energy, public safety and corporate accountability remain subject to private arbitration.

International processes aimed at reforming ISDS, including those taking place at the United Nations Commission on International Trade Law (UNCITRAL) and the Organisation for Economic Cooperation and Development (OECD) have so far progressed slowly and produced limited concrete outcomes.[11] In this context, it is essential for the Netherlands, and for other states, to adopt short- and medium-term measures to reduce ISDS exposure and safeguard policy space, rather than relying solely on long-term treaty renegotiation.

This lack of a coherent overall strategy is further highlighted by recent policy developments. In 2025, the Netherlands formally withdrew from the ECT, acknowledging that even a modernised version of the treaty remained "insufficiently aligned with the Dutch and European goals arising from the Paris Climate Agreement."[12] While this was an important step, signalling that certain investment protections can conflict with urgent climate and sustainability objectives, the Netherlands continues to defend its BITs with countries in the Global South as important tools that provide protection and legal certainty for Dutch companies operating abroad.[13]

This creates a clear double standard: ISDS is recognised as problematic when it constrains domestic policy space, yet the same protections remain available to Dutch investors abroad, including in the fossil fuel sector. This inconsistency undermines policy coherence and weakens the credibility of Dutch climate leadership.

A roadmap with four pathways

This roadmap translates existing legal research[14] into four practical policy pathways for the Netherlands to reduce exposure to ISDS risks that may also inspire other countries to pursue similar approaches:

1. **Avoid new ISDS commitments**
2. **Terminate or amend existing investment treaties**
3. **Pursue coordinated multilateral action**
4. **Avoid arbitration clauses in contracts with corporations.**

Each pathway outlines concrete options, international precedents and possible next steps. Some measures can be implemented more quickly at the national level, while others require international coordination.

The legal tools and precedents to limit or end ISDS already exist; what remains is for governments to act decisively to safeguard policy space for ambitious climate and sustainable development policies.

Common concerns about ending investment treaties: a rebuttal

1. **Would countries lose investment without ISDS?**
   A common concern is that ending ISDS could harm the investment climate and deter foreign investors. However, there is no conclusive evidence that ISDS significantly increases foreign investment flows.[15] Nor is there strong evidence that terminating investment treaties leads to a significant decline in investment.[16] Countries that have terminated treaties generally remain attractive investment destinations because of factors such as legal frameworks, stable institutions, infrastructure, market size and economic prospects. In practice, these structural factors tend to play a far greater role in investment decisions than access to ISDS.[17]

2. **Is terminating treaties legally or politically irresponsible?**
   Some argue that withdrawing from investment treaties could be perceived as unreliable or as undermining the rule of law. In reality, treaty amendment and termination are normal and legitimate features of international law.[18] International agreements are regularly updated, renegotiated or terminated as circumstances change.[19] When carried out transparently and in accordance with international legal rules, treaty termination is a legitimate sovereign policy choice. Generally, it may even improve policy coherence by aligning investment frameworks with evolving commitments on climate action, environmental protection and human rights.

3. **Does ending ISDS mean withdrawing from international cooperation?**
   Reducing or ending ISDS commitments does not imply a retreat from international cooperation. On the contrary, it can create space for new forms of collaboration aimed at removing legal barriers to climate policy and supporting the transition to sustainable economies. Countries can work together to develop investment frameworks that promote responsible investment, support the energy transition and strengthen sustainable development objectives.

4. **Would investors be left without protection?**
   Even without ISDS, investors are not left without protection. Governments remain bound by domestic law, international legal obligations and customary international law. Investors can rely on domestic courts, political risk insurance and, in certain circumstances, international human rights mechanisms.[20] Ending or reforming outdated investment treaties, therefore, does not eliminate investor protection. Rather, it shifts dispute resolution toward legal frameworks that are more transparent, publicly accountable and embedded in domestic judicial systems.

5. **Would exiting ISDS increase the risk of political arbitrariness?**
   Another concern is that, without international arbitration, political decisions may become less predictable. However, moving away from ISDS is precisely intended to protect the policy space for democratic decision-making. Clear legislation, an independent judiciary, and transparent procedures remain the core of investment protection. The question is not whether investors deserve protection, but through which system and at what societal costs.

Pathway 1
Avoid new ISDS commitments

The most direct way to limit future exposure to ISDS claims is to stop including ISDS provisions in new trade and investment agreements. Without new commitments, the scope of the problem does not expand.

The Netherlands is currently negotiating the modernisation of several BITs, including with Nigeria and Ghana, and potentially Tanzania in the near future.[21] These negotiations are based on the 2019 Dutch model investment treaty. While this model introduces certain modifications, it still contains ISDS provisions, meaning that new treaties could create long-term ISDS obligations for decades to come.

At the EU level, new trade agreements often include investment chapters with dispute settlement mechanisms. The European Commission has proposed replacing traditional ISDS with an Investment Court System (ICS), but this entails reforms that are largely procedural. The substantive protections granted to investors – and therefore the ability to challenge government measures, including climate and energy policies – largely remain unchanged. ICS has been included in EU agreements with Canada, Singapore, Vietnam, Mexico and Chile, although these agreements have not yet been ratified.

What are other countries doing?

- **Australia** has adopted a policy of generally avoiding ISDS in new trade and investment agreements.[22]

- Under the *United States-Mexico-Canada Agreement* (USMCA), the **United States and Canada** removed ISDS between themselves, while access to ISDS between the United States and Mexico was significantly narrowed in scope, limited to certain sectors and subject to stricter conditions.[23]

- **Brazil** has developed *Cooperation and Facilitation Investment Agreements* (CFIAs), which do not include ISDS and instead focus on investment facilitation, institutional cooperation and dispute prevention, with state-state dispute settlement as a last resort.[24]

- **The European Union** has concluded several trade agreements without ICS, including with **Japan, New Zealand and Indonesia**, and has not proposed ICS in some ongoing negotiations, such as those with **Australia**.[25]

- The Investment Protocol of the *African Continental Free Trade Area* (AfCFTA) does not contain an ISDS mechanism.[26]

- **South Africa** has largely shifted investment protection to domestic legislation rather than relying on investment treaties.[27]

What could the Netherlands do?

- **Avoid new ISDS commitments in bilateral treaties**
  Ongoing negotiations with Nigeria and Ghana could be reconsidered, paused or adjusted with the aim of excluding ISDS or substantially limiting investor protections.

- **Refrain from supporting new EU agreements with ICS**
  Within the EU Council, the Netherlands could advocate a more cautious approach to new investment dispute mechanisms and promote alternative forms of dispute settlement (e.g. domestic courts, state-to-state dispute settlement).[28]

- **Strengthen parliamentary scrutiny**
  The investment parts in the EU agreements with partners such as Singapore, Vietnam, Chile and Mexico require ratification by national parliaments. This gives the Dutch Parliament the possibility to assess these agreements against national climate objectives and sustainable development goals. In case of Dutch bilateral treaties, the parliament can also request an explicit approval procedure, requiring a formal debate and vote, instead of the usual silent procedure, where approval is automatic unless objections are raised.[29]

- **Adopt a clear policy principle**
  The Netherlands could formalise a policy of excluding ISDS from future agreements, for example, by revising its 2019 model treaty to remove ISDS provisions.

Pathway 2
Terminate or amend existing treaties

Stopping the inclusion of ISDS in new agreements is an important step, but the greatest constraints on policy space lie in the over 2,600 treaties that are currently in force. Globally, around 98 per cent of all known ISDS claims are based on treaties concluded before 2010.[30] For claims brought under Dutch treaties, this applies to all known cases. Addressing these older agreements is therefore essential to safeguard policy space for climate action, public interest regulation and a just energy transition.

As international treaties, BITs are governed by the rules of the Vienna Convention on the Law of the Treaties (VCLT). Under Article 54 of the Convention, a treaty can be terminated either: 1) in accordance with the termination provisions contained in the treaty itself, or (2) at any time with the mutual consent of the treaty partners.[31]

Dutch BITs typically include an initial duration period of 10–15 years after entry into force, during which unilateral termination is not possible. Many treaties are then automatically renewed for an additional period (often ten years), unless one party notifies termination in advance, usually at least six months before the expiry date. Some treaties have an indefinite duration and may be terminated at any time with the required notice period.

Timing is therefore crucial. Missing a termination deadline can lock a country into another treaty cycle lasting ten years or more. Governments must therefore closely monitor these deadlines to ensure that notification is submitted before automatic renewal occurs. Annex A provides an overview of upcoming termination windows for Dutch treaties.

Termination can be carried out unilaterally, through written notification to the treaty partner, for example, via a diplomatic note (Annex C). Alternatively, treaties may be terminated by mutual agreement, which has the advantage that the parties are not bound by the termination deadlines and can end the treaty immediately.

Sunset clauses

Most Dutch BITs contain so-called “sunset clauses”. These provisions extend treaty protection for existing investments for a specified period (typically ten to fifteen years) after a treaty has been terminated. Investors who made their investments before the termination date may still initiate ISDS claims during this period. For example, Shell brought a case against the Netherlands under the Energy Charter Treaty on 23 December 2025, despite the Netherlands having already withdrawn from the treaty on 28 June 2025. The claim relies on the treaty’s twenty-year sunset clause.[32]

Several countries have terminated their treaties with the Netherlands, yet in six cases, sunset clauses remain in force, extending protections until between 2029 (South Africa) and 2036 (Ecuador).[33]

In cases of unilateral termination, sunset clauses cannot be fully neutralised. However, governments may attempt to negotiate with treaty partners to jointly suspend the clause, shorten its duration, or limit its application.[34] Where a treaty is terminated by mutual consent, the parties can explicitly stipulate that the sunset clause will not apply.

Treaty amendment as an alternative

Instead of terminating a treaty entirely, countries may also choose to amend the treaty and remove the ISDS provisions. Under this approach, the substantive investment protections remain in place, but disputes would be resolved through domestic courts or, where provided, through state-state dispute settlement. This helps ensure that disputes are addressed within frameworks that are generally better placed to take into account broader public policy considerations and limit the risk of expansive interpretation and large compensation awards by private arbitral tribunals. Particular attention is required with respect to “most-favoured-nation” (MFN) clauses, as these could otherwise allow investors to “import” ISDS protections from other treaties if not properly addressed.[35]

Another option is to withdraw the advance consent to arbitration without terminating the treaty itself. Most treaties include ISDS clauses through which states express their consent to submit future disputes to arbitration. In principle, this consent could be modified or withdrawn by agreement with the treaty partner, either on a bilateral basis or through a coordinated multilateral arrangement. Unilateral withdrawal of consent may also be theoretically possible, but its legal validity is uncertain and could be challenged by investors.[36]

What are other countries doing?

- Several countries, including **Bolivia, Burkina Faso, Ecuador, India, Indonesia, Kenya, South Africa, Tanzania and Venezuela**, have unilaterally terminated (parts of) their treaties, including those with the Netherlands.

- Following the *Achmea* judgment of the European Court of Justice, almost all intra-EU BITs were terminated through a **plurilateral treaty among 23 EU member states**, including an explicit neutralisation of sunset clauses.[37]

- Multiple European countries, including the **United Kingdom, Germany, France, Spain, the Netherlands, Denmark, Poland, Luxembourg, Slovenia, Lithuania, Portugal, Bulgaria and Italy**, together with the **EU itself**, have withdrawn from the Energy Charter Treaty, or announced their intention to withdraw.
- The **AfCFTA Investment Protocol** encourages African countries to terminate existing intra-African investment treaties.
- In 2016, the **Southern African Development Community (SADC)** amended its *Finance and Investment Protocol* to remove ISDS.
- **Australia** is currently renegotiating a number of its investment treaties with the aim of limiting or removing ISDS provisions.[38]

What could the Netherlands do?

- **Systemically monitor termination windows.**
  The government should maintain a comprehensive overview of all treaty termination deadlines and actively monitor them. Priority should be given to treaties where notification deadlines fall in the near term (those with Panama, Cuba and Bosnia and Herzegovina) as well as treaties with indefinite duration (those with Malaysia, Nigeria, Senegal and Sri Lanka).
- **Prioritise treaties based on risk**
  Not all treaties pose the same level of exposure. Prioritisation could take into account factors such as:
  - Upcoming termination deadlines
  - The willingness of treaty partners to renegotiate or terminate treaties
  - Exposure to potential ISDS claims linked to fossil fuel investments
  - Risks of "treaty shopping", where companies route investments through "mailbox" entities to benefit from favourable treaties.
- **Pursue joint neutralisation of sunset clauses**
  Where treaties are amended by mutual agreement, the parties can explicitly agree that sunset clauses will not apply, for example, through a bilateral agreement or joint declaration. In the case of the Energy Charter Treaty, the Netherlands could also cooperate with other withdrawing countries to conclude an *inter se* agreement preventing new claims among them based on the sunset clause.[39]
- **Use alternatives where termination is politically difficult**
  Where full termination is not feasible, the Netherlands could seek treaty amendments removing ISDS provisions and adjusting MFN clauses accordingly. If termination deadlines have already passed, temporary measures – such as withdrawing advance consent to arbitration – could help limit exposure to future claims.

- **Develop a clear diplomatic strategy and timeline**
  Early engagement with treaty partners about possible termination or revision can facilitate smoother negotiations. A multi-year strategy with annual priorities would help avoid ad hoc decision-making and strengthen the Netherlands' negotiating position.

Pathway 3
Coordinated multilateral action to end ISDS

Terminating investment treaties on a case-by-case basis is slow and inefficient. For the Netherlands, unilateral termination of existing BITs could extend until 2041 (see Annex A), while long sunset clauses could continue to protect existing investments until 2062 (see Annex B). Given the urgent need to meet climate targets, waiting until 2062 is not a realistic option.

A multilateral approach offers a practical solution. Countries can voluntarily participate in a joint framework to terminate or amend multiple BITs simultaneously, including neutralising sunset clauses. This avoids lengthy bilateral negotiations and enables coordinated action across countries.

Under a so-called ***opt-in*** treaty or instrument, each participating country can specify, for each individual treaty, whether it will terminate, amend, or withdraw its advance consent to ISDS. When both treaty partners choose the same approach, it applies to that specific treaty. This allows countries to efficiently adjust their existing investment treaties while expanding policy space for climate and transition policies.

What are other countries doing?

- In 2020, **23 EU member states** concluded a plurilateral treaty to terminate all intra-EU BITs at once, including the neutralisation of sunset clauses. This single coordinated action ended over 130 treaties, with the **Netherlands** terminating 11 BITs.[40]

- The *Mauritius Convention on Transparency* is a UN treaty enabling countries to apply the 2014 UNCITRAL Rules on Transparency in ISDS to older investment treaties concluded before 2014.[41] To date, 25 countries, including the **Netherlands**, have signed, and 10 have ratified the convention.

- Since 2017, countries (including the Netherlands) have negotiated within **UNCITRAL Working Group III** on procedural ISDS reforms, exploring a multilateral opt-in instrument that would implement agreed reforms across existing investment treaties.[42]

- Within the **OECD**, countries are exploring ways to better align investment treaties with the Paris Agreement, including carve-outs for fossil fuels, limiting substantive protections, or terminating outdated treaties.[43] Options for a plurilateral instrument to jointly revise existing treaties are also being examined.[44]

- The ***Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*** (BEPS MLI) demonstrates how over 100 countries can simultaneously adjust bilateral tax treaties without renegotiating each treaty individually, providing a model for ISDS reform.[45]

What could the Netherlands do?

- **Leverage the Santa Marta Conference as a political momentum**
  As a co-host, the Netherlands can help formulate concrete multilateral agreements. The Co-Hosts' report could include clear options for limiting or ending ISDS exposure and invite other countries to commit to joint pathways.

- **Link Santa Marta outcomes to the UN COP process**
  The conference outputs could feed into the UN climate negotiations by creating a structured follow-up process that aligns ISDS reform with pathways for phasing out fossil fuels ahead of COP31 in Turkey.[46]

- **Build a "coalition of the willing"**
  Like-minded countries can collaborate to design multilateral solutions: amending or terminating existing investment treaties, neutralising sunset clauses, and aligning investment frameworks with climate, environmental, and human rights obligations.[47]

Pathway 4
Avoid ISDS in contracts

ISDS risks are not limited to investment treaties. Contracts between states and private companies can also include clauses that allow disputes to be resolved through arbitration.

In such cases, an arbitral tribunal may be called upon if parties disagree on the implementation or interpretation of the contract. In addition, many investment contracts contain so-called "stabilisation clauses", which seek to protect investors from changes in law or policy by freezing the applicable legal framework or requiring compensation if regulatory changes affect the investment.[48] While contract-based arbitration offers narrower protections than treaty-based ISDS, it can create similar risks for public policy space and political legitimacy, particularly in sectors undergoing major transitions, such as the phase-out of fossil fuel activities.

Contract-based arbitration can also run in parallel with treaty-based claims, potentially multiplying overlapping proceedings and increasing financial and administrative burden on governments. For example, in the disputes over the Groningen gas field, both NAM and Shell and ExxonMobil initiated arbitration proceedings with the *Netherlands Arbitration Institute* under contractual agreements from 2018-2019.[49] These proceedings partially run alongside international claims under the Energy Charter Treaty, illustrating how multiple layers of arbitration can compound risks.

What can the Netherlands do?

- **Exclude arbitration clauses from new contracts**
  Future agreements with private companies, including contracts, settlement agreements, and other public-private arrangements, should avoid arbitration clauses. Disputes can instead be resolved through domestic courts. A recent example is the joint letter of intent over the decarbonisation of Tata Steel, which explicitly stipulates that disputes will be handled exclusively by the District Court of The Hague.[50] New contracts should also avoid stabilisation clauses that could lock in the right to arbitration even if BITs are later cancelled.

- **Review and renegotiate existing contracts**
  Conduct a systemic audit of current contracts in sectors central to the energy transition, such as energy, heavy industry, transport, and infrastructure. Where feasible, renegotiate or replace contracts to remove arbitration clauses and any stabilisation provisions, ensuring that disputes are resolved within national legal frameworks and strengthening transparency and accountability.

Conclusion

The Netherlands is at a turning point. Long a key architect and promoter of the ISDS system, it is now increasingly confronted with its consequences firsthand, as investor claims begin to intersect directly with domestic policies designed to protect the public interest.

This roadmap demonstrates that reducing and ultimately eliminating ISDS exposure is both feasible and legally grounded. The Netherlands has a range of practical options at its disposal: refraining from signing new treaties with ISDS, addressing existing treaties, pursuing coordinated multilateral action, and ensuring coherence in investment contracts. Taken together, these pathways provide a realistic strategy to safeguard policy space and align investment policy with climate, environmental, human rights and sustainable development objectives.

Importantly, moving away from ISDS does not mean investments are left unprotected. On the contrary, investors remain protected through national legal systems, international legal standards, and existing safeguards in contracts and insurance. The difference is that disputes are handled within more transparent, publicly accountable, and democratically embedded systems that are better equipped to balance investor protection with broader public interests.

Investments – both public and private – remain crucial for addressing major societal challenges, such as the energy transition, climate adaptation, and the greening of industry and infrastructure. A well-functioning investment climate depends primarily not on access to international arbitration, but on legal certainty, stable policies, and clear rules.

The choice for the Netherlands is therefore not between protection or no protection, but between different forms of protection, with different consequences for public interests. By taking these targeted steps now, the Netherlands can align its investment policy with its climate goals, human rights obligations, and international ambitions.

The legal tools and the international examples exist. What is needed is political will and consistent policies. By choosing this path, the Netherlands can not only strengthen its own policy space but also set an international example for a just and future-proof investment policy. Given the Netherlands’ historical position in the ISDS system, phasing out ISDS can also help other countries – especially in the Global South – expand their policy space and reduce the risks of costly arbitration claims.

Annex A
Schedule for terminating Dutch BITs with ISDS

The table shows, for each treaty, the latest year by which the Netherlands must issue a notice of termination in order to end the treaty at the next available opportunity. Due to sunset clauses, protection for existing investments may continue for a significant period even after the treaty is formally terminated.

Year	Count	Treaties (Countries) Terminated	Cumulative Count	Cumulative %
2026	4	Malaysia, Nigeria, Senegal, Sri Lanka*	4	5.7%
2027	7	Cabo Verde, Egypt, Guatemala, Honduras, Nicaragua, Philippines, Uganda	11	15.7%
2028	9	Hong Kong, Lebanon, Montenegro, Morocco, Oman, Serbia, Singapore, Tajikistan, Zambia	20	28.6%
2029	12	Belize, China, Laos, Mali, Mexico, Mozambique, Namibia, Paraguay, South Korea, Tunisia, Turkey, Vietnam	32	45.7%
2030	4	Albania, Ethiopia, Mongolia, Peru	36	51.4%
2031	9	Armenia, Bangladesh, Belarus, Costa Rica, Gambia, Moldova, Suriname, Ukraine, Yemen	45	64.3%
2032	6	Benin, Dominican Republic, Jamaica, Kazakhstan, Malawi, Uzbekistan	51	72.9%
2033	6	Algeria, Georgia, Jordan, Macao, Macedonia, Zimbabwe	57	81.4%
2034	4	Argentina, Bahrain, Burundi, Pakistan	61	87.1%
2035	2	Cambodia, El Salvador	63	90.0%
2036	6	Bosnia, Cuba, Ghana, Panama, Russian Federation, Uruguay**	69	98.6%
2041	1	Kuwait	70	100.0%
TOTAL	**70**		**70**	**100.0%**

Source: UNCTAD Investment Policy Hub

* Treaties with Malaysia, Nigeria, Senegal and Sri Lanka have indefinite duration periods and can be terminated at any time.

** Treaties with Bosnia, Cuba, Ghana, Panama, the Russian Federation and Uruguay could have been terminated between January and September 2026. They are shown at their next available termination window (2036).

Annex B
Expected expiration of ISDS protection following unilateral treaty termination

The table below shows when ISDS protections under the 70 active Dutch BITs are expected to end. It assumes the Netherlands unilaterally terminates each treaty at the earliest legal opportunity, with sunset clauses typically extending protections for up to 15 years after termination. In this scenario, ISDS protections for existing investments could persist until 2062. This timeline is incompatible with the urgency of climate action, which requires rapid emissions reduction well before mid-century. For this reason, mutual termination with explicit neutralisation of sunset clauses under Pathway 2, as well as the coordinated multilateral approach outlined in Pathway 3, are essential components of a credible and effective exit strategy.

Year ISDS Fully Expires	Count	Treaties (Countries) Terminated	Cumulative Count	Cumulative %
2037	2	Malaysia, Senegal	2	2.9%
2038	1	Morocco	3	4.3%
2040	1	Albania	4	5.7%
2041	1	Sri Lanka	5	7.1%
2042	5	Cabo Verde, Guatemala, Honduras, Nigeria, Philippines	10	14.3%
2043	4	Egypt, Nicaragua, Singapore, Uganda	14	20.0%
2044	15	Belize, China, Hong Kong, Lebanon, Mexico, Montenegro, Mozambique, Namibia, Oman, Paraguay, Serbia, Tajikistan, Tunisia, Turkey, Zambia	29	41.4%
2045	5	Ethiopia, Laos, Mali, South Korea, Vietnam	34	48.6%
2046	8	Armenia, Bangladesh, Belarus, Costa Rica, Mongolia, Peru, Suriname, Yemen	42	60.0%
2047	9	Benin, Dominican Republic, Gambia, Jamaica, Kazakhstan, Malawi, Moldova, Ukraine, Uzbekistan	51	72.9%
2048	2	Algeria, Jordan	53	75.7%
2049	8	Argentina, Bahrain, Burundi, Georgia, Macao, Macedonia, Pakistan, Zimbabwe	61	87.1%
2051	7	Cambodia, Cuba, El Salvador, Ghana, Panama, Russian Federation, Uruguay	68	97.1%
2052	1	Bosnia	69	98.6%
2062	1	Kuwait	70	100.0%
TOTAL	**70**		**70**	**100.0%**

Source: UNCTAD Investment Policy Hub

Annex C
Model notification letter for unilateral termination of a bilateral investment treaty

The Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the Ministry of [Foreign Affairs / Trade / Economy] of the Republic of [X] and has the honour to refer to the Agreement on the Promotion and Protection of Investments between the Government of the Kingdom of the Netherlands and the Government of the Republic of [X], signed on [date] (the "Agreement").

In accordance with Article [X] of the Agreement, the Government of the Netherlands hereby notifies its decision to terminate the Agreement. This notification shall take effect in accordance with the termination provisions set out therein.

The Government of the Netherlands further requests that the Government of the Republic of [X] consider waiving [or reducing/modifying] the application of the sunset clause set out in Article [X] of the Agreement.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands would appreciate receiving a reply note from the Ministry of [Foreign Affairs / Trade / Economy] of the Republic of [X] confirming receipt of this note.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the Ministry of [Foreign Affairs / Trade / Economy] of the Republic of [X] the assurances of its highest consideration.

[Place], [Date]

Endnotes

1 Jean Blaylock and Pia Eberhardt, 'Red Carpet Courts: 10 ISDS stories of how the rich and powerful hijacked justice', September 2025, https://10isdsstories.org/; Columbia Center for Sustainable Investment, "Primer on International Investment Treaties and Investor-State Dispute Settlement", December 2021, https://ccsi.columbia.edu/wp-content/uploads/2021/12/Primer-on-International-Investment-Treaties-and-Investor-State-Dispute-Settlement_12.19.21.pdf; Iza Camarillo, 'The Worst of the Worst: Egregious Corporate Attacks on Public Interest Policies", Public Citizen, 13 January 2025, https://gtwaction.org/wp-content/uploads/2024/11/Egregious-ISDS-Cases-Web.pdf.

2 UNCTAD, "Compensation and Damages in Investor-State Dispute Settlement Proceedings", IIA Issues Note #1, September 2024, https://unctad.org/member/access?destination=/system/files%3Ffile%3Dofficial-document/Diaepcbinf2024d3_en.pdf.

3 David Boyd, UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, "Paying Polluters: the catastrophic consequences of investor-state dispute settlement for climate and environmental action and human rights", A/78/168, 13 July 2023, https://www.ohchr.org/en/documents/thematic-reports/a78168-paying-polluters-catastrophic-consequences-investor-state-dispute.

4 SOMO, 'Aftershock in Groningen: How Shell and ExxonMobil use arbitration to offload the costs of closing the Netherlands' largest gas field', 2 July 2025, https://www.somo.nl/aftershock-in-groningen/

5 SOMO, Ember and IEEFA, 'Compensation for Stranded Assets? German energy giants claim billions in public funds for loss-making Dutch coal-fired power plants', 28 April 2021, https://www.somo.nl/compensation-for-stranded-assets/

6 UNCTAD, Investment Dispute Settlement Navigator, last accessed 8 April 2026, https://investmentpolicy.unctad.org/investment-dispute-settlement/country/148/netherlands/investor; ICSID Case Database, last accessed 8 April 2026, https://icsid.worldbank.org/cases/case-database

7 SOMO, TNI and Both ENDS, 'Dutch Bilateral Investment Treaties: 60 years of protecting multinationals', 23 May 2023, https://www.somo.nl/60-years-of-dutch-investment-treaties-is-no-cause-for-celebration/

8 The Dutch ISDS Datahub: https://www.somo.nl/dutch-isds-datahub/

9 Netherlands Model Investment Agreement, 22 March 2019, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5832/download

10 Article 2.1(c) of the UNFCCC Paris Agreement, https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf

11 UNCITRAL Working Group III: Investor-State Dispute Settlement Reform, https://uncitral.un.org/en/working_groups/3/investor-state; OECD, Investment Treaties, https://www.oecd.org/en/topics/the-future-of-investment-treaties.html

12 Minister for Climate and Energy, Government appreciation modernisation of the Energy Charter Treaty, 2 November 2022, https://www.tweedekamer.nl/downloads/document?id=2022D44720

13 Minister of Climate and Green Growth, Answers to questions from MP Teunissen regarding the investment claim filed by ExxonMobil over the closure of the Groningen gas field, 25 November 2024, https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2024Z16315&did=2024D45922

14 For example: Ladan Mehranvar, with Martin Dietrich Brauch, Achyuth Anil, Anna-Sophie Kloppe, Lucas Clover Alcolea, and Madeleine Songy, 'Breaking Free: Strategies for Governments on Terminating Investment Treaties and Removing ISDS Provisions', Columbia Center on Sustainable Investment (CCSI), October 2024, https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/ccsi-breaking-free-investment-treaties.pdf; Helionor De Anzizu and Nikki Reisch, 'Overcoming International Investment Agreements as a Barrier to Climate Action: A Toolkit to Safeguard Fossil Fuel Measures from Investment Treaty Claims', Center for International Environmental Law (CIEL), January 2024, https://www.ciel.org/wp-content/uploads/2024/02/Overcoming-International-Investment-Agreements-as-a-Barrier-to-Climate-Action.pdf; Nathalie Bernasconi-Osterwalder, Sarah Brewin, Martin Dietrich Brauch and Suzy Nikiema, 'Terminating a Bilateral Investment Treaty', IISD Best Practice Series, March 2020, https://www.iisd.org/system/files/publications/terminating-treaty-best-practices-en.pdf; CCSI, IIED, IISD (2019), 'Draft Treaty Language: Withdrawal of Consent to Arbitrate and Termination of International Investment Agreements', 15 July 2019, https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/UNCITRAL-submission-Withdrawal-of-Consent-and-Termination.pdf

15 Josef C. Brada, Zdenek Drabek, and Ichiro Iwasaki (2021), "Does Investor Protection Increase Foreign Direct Investment? A Meta-Analysis," Journal of Economic Surveys 35(1), pp. 34-70; Joachim Pohl, "Societal Benefits and Costs of International Investment Agreements: A Critical Review of Aspects and Available Empirical Evidence," (OECD Working Papers on International Investment 1, Paris: OECD, 2018), https://www.oecd-ilibrary.org/finance-and-investment/societal-benefits-and-costs-of-international-investment-agreements_e5f85c3d-en.

16 Public Citizen (2018), Termination of Bilateral Investment Treaties Has Not Negatively Affected Countries' Foreign Direct Investment Inflows, Research Brief, https://www.citizen.org/wp-content/uploads/pcgtw_fdi-inflows-from-bit-termination_1.pdf.

17 Ladan Mehranvar and Sunayana Sasmal. The Role of Investment Treaties and Investor-State Dispute Settlement in Renewable Energy Investments. New York: Columbia Center on Sustainable Investment (CCSI), December 2022, https://ccsi.columbia.edu/wp-content/uploads/2022/12/The-Role-of-Investment-Treaties-and-Investor%E2%80%93State-Dispute-Settlement-ISDS-in-Renewable-Energy-Investments.pdf; Lise Johnson, Lisa Sachs, Brooke Güven and Jesse Coleman. Cost and Benefits of Investment Treaties: Practical Considerations for States, CCSI Policy Brief, March 2018, https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/07-Columbia-IIA-investor-policy-briefing-ENG-mr.pdf
18 Treaty amendment and termination are governed by Articles 39-40 and Article 54 of the Vienna Convention on the Law of the Treaties (1969), https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
19 By the end of 2024, 592 international agreements with investment provisions had been terminated, of which only 176 (30%) were replaced. See: UNCTAD, The reform of international investment agreements - state of play, IIA Issues Note, December 2025, https://unctad.org/system/files/official-document/diaepcbinf2026d1_en.pdf
20 Lise Johnson, Jesse Coleman, Brooke Güven, Lisa Sachs, 'Alternatives to Investor-State Dispute Settlement', CCSI Working Paper, April 2019, https://ccsi.columbia.edu/wp-content/uploads/2026/01/Alternatives-to-ISDS-11-April-2019-1.pdf
21 Progress Report on Trade Agreements – January 2026, https://open.overheid.nl/documenten/3499eb30-fb10-400f-9905-44147b9f629f/file.
22 Australian Government Department of Foreign Affairs and Trade, Australia's bilateral investment treaties, https://www.dfat.gov.au/trade/investment/australias-bilateral-investment-treaties
23 Congressional Research Service, USMCA: Investment Provisions, 8 January 2020, https://www.congress.gov/crs-product/IF11167
24 J.H. Vieira Martins, 'Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments', Investment Treaty News, International Institute for Sustainable Development (IISD), 12 June 2017, https://www.iisd.org/itn/2017/06/12/brazils-cooperation-facilitation-investment-agreements-cfia-recent-developments-jose-henrique-vieira-martins/
25 European Commission, Directorate General for Trade (DG Trade), Negotiations and agreements, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en
26 Muhammad Siddique Ali Pirzada, 'The AfCFTA Investment Protocol: A New Age for Regional Investment and Dispute Resolution', Harvard International Law Journal, 11 April 2025, https://journals.law.harvard.edu/ilj/2025/04/the-afcfta-investment-protocol-a-new-age-for-regional-investment-and-dispute-resolution/
27 Mohammad Mossallam, 'Process Matters: South Africa's Experience Exiting its BITs, GEG Working Paper 2015/97, January 2015, https://www.geg.ox.ac.uk/sites/default/files/GEG%20WP_97%20Process%20matters%20-%20South%20Africas%20experience%20exiting%20its%20BITs%20Mohammad%20Mossallam.pdf
28 Jane Kelsey, 'UNCITRAL Working Group III: Promoting alternatives to investor-state arbitration as ISDS reform', Investment Treaty News, 2 October 2019, https://www.iisd.org/itn/2019/10/02/uncitral-working-group-iii-promoting-alternatives-to-investor-state-arbitration-as-isds-reform-jane-kelsey/
29 Lower House of the Dutch Parliament, International Agreements, https://www.tweedekamer.nl/kamerleden-en-commissies/commissies/buitenlandse-zaken/internationale-verdragen
30 UNCTAD, "Compensation and Damages in Investor-State Dispute Settlement Proceedings", IIA Issues Note #1, September 2024, https://unctad.org/system/files/official-document/diaepcbinf2024d3_en.pdf
31 Vienna Convention on the Law of the Treaties, 1969, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
32 SOMO and Both ENDS, 'Shell files new arbitration against the Netherlands over Groningen gas field closure', 21 January 2026, https://www.somo.nl/shell-files-new-arbitration-against-the-netherlands-over-groningen-gas-field-closure/
33 The following terminated Dutch treaties remain subject to active sunset clauses, with protections expiring between 2029 and 2036: South Africa (2029), Indonesia (2030), India (2031), Burkina Faso (2034), Tanzania (2034), and Ecuador (2036).
34 Nathalie Bernasconi-Osterwalder, Sarah Brewin, Martin Dietrich Brauch and Suzy Nikiema, 'Terminating a Bilateral Investment Treaty', IISD Best Practice Series, March 2020, https://www.iisd.org/system/files/publications/terminating-treaty-best-practices-en.pdf
35 See page 16; Ladan Mehranvar, with Martin Dietrich Brauch, Achyuth Anil, Anna-Sophie Kloppe, Lucas Clover Alcolea, and Madeleine Songy, 'Breaking Free: Strategies for Governments on Terminating Investment Treaties and Removing ISDS Provisions', Columbia Center on Sustainable Investment (CCSI), October 2024, https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/ccsi-breaking-free-investment-treaties.pdf
36 See pages 18-19; Ladan Mehranvar, with Martin Dietrich Brauch, Achyuth Anil, Anna-Sophie Kloppe, Lucas Clover Alcolea, and Madeleine Songy, 'Breaking Free: Strategies for Governments on Terminating Investment Treaties and Removing ISDS Provisions', Columbia Center on Sustainable Investment (CCSI), October 2024, https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/ccsi-breaking-free-investment-treaties.pdf

37 Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, 29 May 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22020A0529(01)
38 Australian Government Department of Foreign Affairs and Trade, Renegotiation of Australia's Bilateral Investment Treaties, https://www.dfat.gov.au/trade/investment/australias-bilateral-investment-treaties/renegotiation-australias-bilateral-investment-treaties-argentina-pakistan-and-turkiye
39 Lukas Schaugg and Suzy Nikiema, 'Model Inter Se Agreement to Neutralize the Survival Clause of the Energy Charter Treaty Between the EU and Other non-EU Contracting Parties', IISD, August 2024, https://www.iisd.org/publications/brief/energy-charter-treaty-survival-clause
40 Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union, 29 May 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22020A0529(01)
41 United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, https://uncitral.un.org/en/texts/arbitration/conventions/transparency
42 UNCITRAL Working Group III, 'Draft multilateral instrument on ISDS reform', Note by the Secretariat, 8 July 2024, https://docs.un.org/en/A/CN.9/WG.III/WP.246
43 OECD, 'Methods to align investment treaty benefits for energy investment with the Paris Agreement and net zero', Note by the Secretariat, 12 March 2025, https://one.oecd.org/document/DAF/INV/TR1/WD(2024)1/REV2/en/pdf
44 OECD, 'Treaty modification: legal framework and opportunities for investment treaties', Note by the Secretariat, 21 March 2025, https://one.oecd.org/document/DAF/INV/TR2/WD(2024)8/REV2/en/pdf
45 OECD, BEPS Multilateral Instrument, https://www.oecd.org/en/topics/beps-multilateral-instrument.html
46 Eunjung Lee and Maeve Collins-Tobin, 'From COP30 to COP31: Opportunities to advance global ISDS reform', blog, E3G, 18 February 2026, https://www.e3g.org/news/from-cop30-to-cop31-opportunities-to-advance-global-isds-reform/
47 Examples of other climate clubs are: Powering Past Coal Alliance (PPCA), Beyond Oil and Gas Alliance (BOGA), and the Netherlands-chaired Coalition on Phasing Out Fossil Fuel Incentives Including Subsidies (COFFIS).See also: Kyla Tienhaara, Harro van Asselts and Peter Newell (2025), 'Radical Reform of the International Investment Treaty Regime: A Role for Climate Clubs?', Global Policy 16(5), 798-810, https://onlinelibrary.wiley.com/doi/10.1111/1758-5899.70067
48 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, 'Evolving Standards on Stabilization', March 2025, https://www.iisd.org/system/files/2025-03/evolving-stabilization-standards-mining.pdf
49 SOMO, 'Aftershock in Groningen: How Shell and ExxonMobil use arbitration to offload the costs of closing the Netherlands' largest gas field', 2 July 2025, https://www.somo.nl/aftershock-in-groningen/
50 See Article 27, The State of the Netherlands, the Province of North Holland, Tata Steel Nederland B.V., and Tata Steel Limited, Joint Letter of Intent, 29 September 2025, https://open.overheid.nl/documenten/8ba9e407-9bf8-492a-b8b2-418dd227a09a/file

SOMO (Centre for Research on Multinational Corporations)
KNSM-laan 17, 1019 LA Amsterdam, The Netherlands
www.somo.nl

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Authors Bart-Jaap Verbeek and Fernando Hernandez

Layout Frans Schupp

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