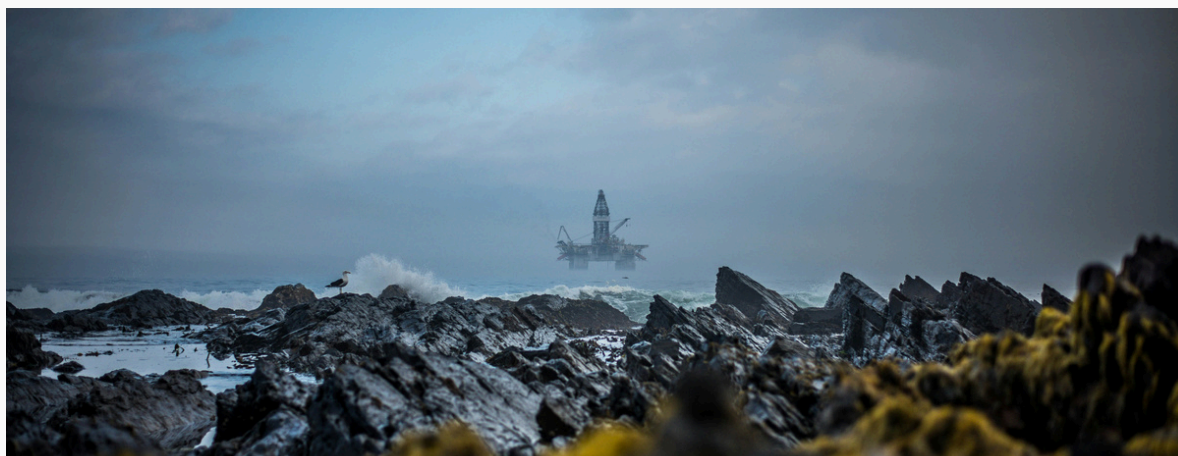


Policy brief

POLICY@SUSSEX | OCTOBER 2024

Getting Serious on Supply Emerging developments in achieving a rapid and fair fossil fuel phase-out



1. Where are we at?

Next month, the 29th Conference of the Parties (COP) will get underway in Baku, Azerbaijan. Anticipation has been building over the policy areas that will be prioritised, and how to increase the ambition of governments – especially the wealthiest ones – to deliver on the promises made at previous COPs. The COP29 hosts seem unwilling to prioritise negotiations around phasing out fossil fuels given Azerbaijan's high level of dependence on fossil fuel revenues and the recent expansion of gas production,¹ despite loudening demands from governments, social movements, and the growing scientific consensus on its necessity to achieve the Paris Agreement.

Omitting fossil fuels at COP29 would be a setback for global climate governance. At the close of COP28 last year, held in the United Arab Emirates (UAE), governments agreed to “transition away from fossil fuels”. This was lauded as a landmark moment; the first time that fossil fuels – responsible for 90% of annual global carbon emissions² – were explicitly mentioned in a concluding text at a COP gathering.³

Since the ‘UAE Consensus’ was reached, similar calls have been made by high-ranking United Nations (UN) officials and heads of state from around the world. At the UN Summit for the Future, held in New York in September, the final outcome text – known as the Pact for the Future – cemented the commitments made in Dubai for “transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner” after a concerted battle to keep this language in the text.⁴

But naming the problem is only the first step – addressing it is another matter altogether. Fossil fuel production continues to reach record-highs⁵ and governments’ production plans – especially those of wealthy industrialised countries like the USA and Norway – are entirely incompatible with domestic and international climate commitments.⁶

¹ E3G, 2024, ‘Powering up the COP29 presidency’, <https://www.e3g.org/publications/powering-up-the-cop29-presidency/>

² SEI, Climate Analytics, E3G, IISD, and UNEP, 2023, ‘The Production Gap: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises’, <https://doi.org/10.51414/sei2023.050>

³ SUS-POL, 2023, ‘Taking Stock of Supply: Where next for fossil fuels after COP28?’, University of Sussex, <https://www.sussex.ac.uk/webteam/gateway/file.php?name=suspol-cop28-policy-briefing-final-accessible.pdf&site=676>

⁴ UN, 2024, ‘Pact for the Future, Global Digital Compact and Declaration on Future Generations’, <https://www.un.org/sites/un2.un.org/files/sof-pact-for-the-future-adopted.pdf>

⁵ Energy Institute, 2024, ‘Statistical Review of World Energy’, <https://www.energyinst.org/statistical-review>

⁶ SEI, Climate Analytics, E3G, IISD, and UNEP, 2023, ‘The Production Gap: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises’, <https://doi.org/10.51414/sei2023.050>

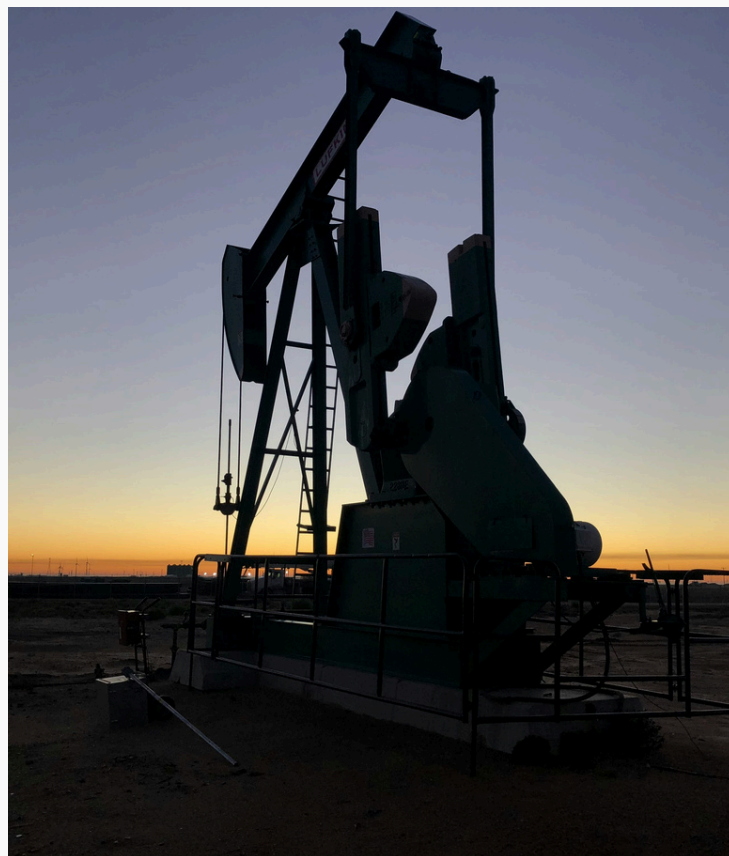
A Growing Risk

The International Energy Agency (IEA) anticipates that the share of coal, oil and gas will remain dominant by the end of the decade, comprising 73% of the global energy supply by 2030.⁷ Substantial progress has been made in scaling up clean electricity generation, especially in China, but the energy transition requires both phasing-in renewable energy technologies, while phasing-out fossil fuel production. In the most recent World Energy Outlook published by the IEA, the authors note that achieving their net-zero scenario requires both “scaling up the supply and demand of clean energy and on scaling back the supply and demand of fossil fuels”, adding that supply-side policies could prove crucial for “avoiding the unplanned, chaotic or premature retirement of existing fossil fuel infrastructure where this could have negative consequences for the reliability of the overall system”.⁸

Ongoing and expanding fossil fuel production is creating a huge risk for governments, people and the planet. On the one hand, if the production plans of governments come to fruition, then the goals of the Paris Agreement will be missed, global temperatures will rise further, and the impacts of the climate crisis could become catastrophic. On the other hand, if governments phase-out fossil fuel production at the speed and depth now required, there will be vast social and economic challenges to overcome and manage, but also opportunities for cleaner air, economic development, and jobs in renewables industries.

Due to this perceived jeopardy, policies that target the supply of fossil fuels with the intention of regulating, reducing or phasing-out production are of growing interest to governments and gaining traction within international fora.⁹ These policies, known more commonly as supply-side climate policies, incorporate a broad range of policy tools, mechanisms and levers, including bans or moratoria, production limits or ceilings, reforms to or the removal of fossil fuel subsidies and other forms of finance, and divestment initiatives.¹⁰ Others have suggested the use of more targeted taxes on fossil fuel production,¹¹ greater disclosures over the financial risk of (re)investing in production,¹² or the use of central banks.¹³ Some policies or changes in governance can indirectly curtail fossil fuel production. For instance, national or subnational courts ruling that proposed fossil fuel projects must incorporate Scope 3 emissions (emissions generated by their consumption as well as production).

The diversity of policy options and approaches being put forward underscore the scale of the challenge that lays ahead.



Targeting fossil fuel production to successfully phase out production requires strengthened coordination of climate governance at the international, regional and national levels, the pulling of multiple policy levers simultaneously at different levels of governance, and the ongoing alignment of efforts by governments, companies, and other stakeholders, internationally and domestically. It also requires decisive climate leadership.

The SUS-POL project, based at the University of Sussex, explores the dynamics of supply-side climate policies, seeking to answer the where, why, how and who of this emergent and critical field of climate policy. This short briefing identifies a number of trends on the supply-side of climate policy from around the world and the risks posed to the durability of ambitious supply-side climate policy programmes. By shining a light on these ahead of COP29, SUS-POL hopes to contribute to ongoing efforts to bring fossil fuel production to the centre of international climate negotiations and accelerate a fast, fair and funded fossil fuel phase-out.

⁷ IEA, 2023, ‘World Energy Outlook 2023’, <https://www.iea.org/reports/world-energy-outlook-2023>.

⁸ IEA, 2024, ‘World Energy Outlook 2024’, <https://iea.blob.core.windows.net/assets/c036b390-ba9c-4132-870b-ffb455148b63/WorldEnergyOutlook2024.pdf>

⁹ Newell, P., & Daley, F., 2024, ‘Supply-side climate policy: A new frontier in climate governance’, WIREs Climate Change, e909. <https://doi.org/10.1002/wcc.909>

¹⁰ SUS-POL, n.d., ‘SUS-POL Policy Tracker’, <https://fossilfueltracker.org/app/ffnpt>.

¹¹ Fossil Fuel Treaty, 2024, ‘Policymakers’ toolkit for a just transition from fossil fuels’, <https://static1.squarespace.com/static/5dd3cc5b7fd99372fbb04561/t/667d6dff097a347b0c896532/1719496193691/Policymakers+Toolkit+FINAL+27+JUNE+24.pdf>

¹² Ibid; Carbon Tracker Initiative, 2024, ‘Carbon Tracker Response to 2023 Financial Conduct Authority Consultation on UK Listings Regime Website’, <https://carbontracker.org/reports/carbon-tracker-response-to-2023-financial-conduct-authority-consultation-on-uk-listings-regime-website/>

¹³ Kroll, M., and Kühne, K., “Climate Bailout”: a new tool for central banks to limit the financial risk resulting from climate change’, International Environmental Agreements, <https://link.springer.com/article/10.1007/s10784-024-09630-4>



2. Emerging trends on the supply-side

There are a number of ways in which governments and other institutions are directly and indirectly targeting fossil fuel production. While some of these policies and initiatives are well-established, like the divestment movement and the use of bans and moratoria, other policy areas and interventions are emergent, reactive and experimental. In this briefing, we collate several of these trends on the supply-side ahead of COP29 and how they could inform future efforts to restrict fossil fuel production.

2.1 GOVERNMENT POLICY TO RESTRICT FOSSIL FUEL PRODUCTION

Some governments now acknowledge the fact that to be ambitious on climate policy requires a more coherent approach to fossil fuel production. As a result, a variety of policies are being introduced that directly impact fossil fuel production.

In the UK, the new Labour government has pushed ahead with its plan to end new licensing for oil and gas production. This is a decisive first-step in planning for an end to fossil fuel production in the UK, which is the second largest oil and gas producer in Europe behind Norway. While the policy objective of ending licensing is set, the details are still emerging with a government consultation planned for the months ahead. The durability of this policy, and its wider impact on fossil fuel production across the UK, is highly contingent on forthcoming government policy – especially policy that relates to oil and gas workers and the viability of a 'just transition'.

A motion narrowly passed at the Trade Unions Congress (TUC) meeting in September 2024 calling for no licensing ban to be implemented by the government before a fully-funded jobs guarantee is agreed.¹⁴ This came after Unite, one of the biggest trade unions in the UK, launched its 'No Ban Without A Plan' campaign.¹⁵ Clearly, complex negotiations lie ahead, but the new government has made it clear that it intends to use this policy as leverage on the world stage. Ed Miliband, the Secretary of State for the Department of Energy Security and Net-Zero, recently stated the government's ambitions to "fill the vacuum" of international climate leadership, stressing that "you only get to lead internationally if you set the right example at home".¹⁶

Across the Atlantic, in the USA, President Biden paused liquefied natural gas (LNG) export approvals in January 2024 while his government assessed the impact of these projects on the climate. There is emerging evidence that the total emissions intensity of the lifecycle of LNG exports (from production to transportation, through to end-use consumption) has a greenhouse gas footprint 33 percent higher than that of coal.¹⁷ The move from the outgoing President was celebrated as a vital step to keeping domestic gas prices down for citizens by restricting exports to countries that are not members of free trade agreements with the USA, and an initial move to assessing fossil fuel infrastructure on environmental and climatic grounds. Since the USA has quickly become the world's largest LNG exporter after the previous export ban of 2016 was lifted, the pause has global significance in terms of commodity prices.

¹⁴ BBC News, 2024, 'New oil and gas ban threatens jobs, unions warn', <https://www.bbc.co.uk/news/articles/c4gd1q9ejqdo.amp>.

¹⁵ Unite the Union, 2024, 'Unite launches major oil and gas campaign: No Ban Without a Plan', <https://www.unitetheunion.org/news-events/news/2024/may/unite-launches-major-oil-and-gas-campaign-no-ban-without-a-plan>

¹⁶ The Guardian, 2024, 'Labour will take global lead on climate action, Ed Miliband vows', <https://www.theguardian.com/environment/article/2024/jul/01/labour-will-take-global-lead-on-climate-action-ed-miliband-vows>

¹⁷ Howarth, R., 2024, 'The Greenhouse Gas Footprint of Liquefied Natural Gas (LNG) Exported from the United States', Energy Science & Engineering, https://www.research.howarthlab.org/publications/Howarth_LNG_assessment_preprint_in_press.pdf



However, in practice, the LNG pause may not be as impactful as first thought. The 48,000,000,000 cubic feet of LNG exported daily – nearly half of all production in the USA – is unaffected, and facilities already permitted and under construction will extend this export capacity by an additional 9,700,000,000 cubic feet per day.¹⁸ LNG export capacity is expected to grow by 80 percent between 2024 and 2028.¹⁹ Indeed, President Biden has already granted a five-year licence to New Fortress Energy Inc. to develop a small-scale LNG export plant known as Fast LNG offshore near Altamira, Mexico.²⁰ The LNG pause is highly likely to be impacted by the Presidential election in November 2024, with Republican candidate Donald Trump already stating that he will lift the export ban immediately as part of his “drill baby drill” energy strategy.²¹ It is less clear how this policy – and the broader policy approach to LNG exports in the USA – will fare if the Democrat’s Kamala Harris wins the White House.

Another interesting case is the current presidential ban on new exploration and exploitation licences to develop oil and gas projects proposed by President Gustavo Petro in Colombia. The country is a fossil fuel producer, where around 9% of the central government income comes from the oil sector,²² and where some of the main exports are crude oil and coal briquettes. With a focus on energy communities and decentralising energy systems in just ways, the government has charted a new direction for energy policy.

In this vein, while Ecopetrol (Colombia’s state-owned oil company) and Petrobras discovered important reserves of oil and gas in the north part of the country, Petro called on Ecopetrol to ‘get the oil out of your head’ to focus on renewables and artificial intelligence.²³

And last year, Ecuadorians voted in a national referendum to protect the Yasuni National Park, rejecting the oil exploitation in the ITT field. While the Constitutional Court gave the Executive a year to cease operations and to dismantle the oil facilities, the operations continue in block 43. President Noboa’s government has presented a report to extend operations by 5 or even 10 years, claiming that this time is needed to properly and securely close down operations.²⁴ Against this strategy to delay the closure of block 43, the UN has urged the government to respect the society’s decision and the Waorani, Tagaeri and Taromenane Indigenous Peoples in Isolation and Initial Contact – PIACI – hosted the International Summit for Yasuni during August 2024 with organisations and peoples from different parts of the world to plan actions to secure the fulfilment of the popular will to halt extraction and for the effective participation of Indigenous Peoples and civil society in the process.²⁵

2.2 LEGAL CHALLENGES AND COURT RULINGS

The use of litigation, courts and other legal mechanisms has become an increasingly prominent strategy for the global climate justice movement to challenge fossil fuel companies, their production plans, and the governmental support they receive. In 2023, at least 230 new climate cases were filed.²⁶ Although the grounds for these legal challenges and their outcomes vary, there is clear global momentum behind using the law to target fossil fuel production and, in the words of the Grantham Research Institute, a “consolidation and concentration of strategic litigation efforts in areas anticipated to have high impact”.²⁷

¹⁸ Environmental Defence Fund, 2024, ‘Biden wants facts first: pauses LNG permits to analyze climate impact’, <https://blogs.edf.org/energyexchange/2024/03/01/biden-wants-facts-first-pauses-lng-permits-to-analyze-climate-impact/>

¹⁹ ETF Trends, 2024, ‘U.S. LNG Export Capacity to Rise 80% by 2028’, <https://www.etftrends.com/energy-infrastructure-channel/us-lng-export-capacity-rise-80-percent-2028/>

²⁰ Bloomberg UK, 2024, ‘Biden Grants First New LNG Approval Since Freezing Permits’, <https://www.bloomberg.com/news/articles/2024-09-03/biden-grants-first-new-lng-approval-since-freezing-permits>

²¹ ABC News, 2024, ‘Trump says ‘drill, baby, drill,’ but the record for US oil production isn’t his’, <https://abcnews.go.com/Politics/drill-baby-drill-donald-trump-oil-gas-rnc/story?id=112108980>

²² Rubiano, M., 2022, ‘How Colombia plans to keep its oil and coal in the ground’, <https://www.bbc.com/future/article/20221116-how-colombia-plans-to-keep-its-oil-and-gas-in-the-ground>

²³ Infobae, 2024, ‘Petro cuestionó celebraciones de yacimientos de gas: “No es buena noticia el consumo del petróleo, el carbón y el gas”’, <https://www.infobae.com/colombia/2024/10/04/petro-cuestiono-celebraciones-de-yacimientos-de-gas-no-es-buena-noticia-el-consumo-del-petroleo-el-carbon-y-el-gas/>
²⁴ BBC News Mundo, 2024, ‘Por qué Ecuador sigue explotando petróleo en el Parque Yasuni un año después del histórico referendo en el que se votó a favor de prohibirlo’, <https://www.bbc.com/mundo/articles/cvgw4y122z4o>

²⁵ Foro Social Panamazónico, 2024, ‘Invitation to the International Summit for Yasuni: a call to action’, <https://www.forosocialpanamazonico.com/invitacion-a-la-cumbre-internacional-por-el-yasuni/>

²⁶ Setzer, J. and Highman, C., 2024, ‘Global trends in climatechange litigation: 2024 snapshot’, <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf>

²⁷ Ibid.

According to Oil Change International (OCI), the number of lawsuits filed against fossil fuel companies each year has tripled since 2015, when the Paris Agreement was signed.²⁸ The same report points to three categories of lawsuits that have grown during this period: compensation from fossil fuel companies for climate damages (38%), challenges to misleading advertising claims by companies about the climate and environment (16%), and legal requirements for companies to reduce their emissions (12%).²⁹ The Grantham Research Institute notes important developments in litigation against fossil fuel firms, where more than 30 cases worldwide are currently seeking to hold companies accountable for climate-related harm caused by their contributions to greenhouse gas emissions.³⁰ In separate research the Grantham Research Institute found that a climate litigation filing or an unfavourable court decision in a climate case reduced firm value relative to expected values.³¹ The largest responses to litigation were found in litigation efforts against the Carbon Majors, where firm value was reduced by 0.57% following case filings and by up to 1.50% following unfavourable judgements.³²



States are also facing legal challenges for supporting the expansion of fossil fuel production. At the beginning of 2024, the government of Norway was challenged by Greenpeace Nordic, Natur og Ungdom (Nature and Youth), alongside six youth activists, at the European Court of Human Rights (ECtHR) due to its decision to expand oil and gas production in the Arctic and a failure to incorporate the emissions into their decisions. The government of Norway, which is the largest fossil fuel producer in Europe, appealed the decision immediately.

Across the North Sea, in the UK, the Supreme Court – the country's highest court – ruled that a local council should have considered the full climate impact of burning oil from new wells at the Horse Hill project in Surrey in the south of England, more commonly known as Scope 3 emissions.³³ The case, brought by Sarah Finch, delivered a landmark court ruling that could set an important precedent for the approval of future fossil fuel projects in Britain. Indeed, in August 2024, the new Labour government in the UK decided not to defend the legal challenges brought by Uplift and Greenpeace against the government over the approvals of the Rosebank and Jackdaw oil and gas fields, thereby agreeing the approvals were unlawful.³⁴

Meanwhile, last year, in the state of Montana in the USA, a group of 16 young people, between 5 and 22 years old, brought a case against the Montana state government on the grounds that the state's Environmental Policy Act prohibited the government from considering the climate impact of proposed energy projects.³⁵ According to the young plaintiffs, this violated the "right to a clean and healthful environment" encoded in Montana's constitution. The court judge ruled in favour of the young people and now the state must consider climate change when approving or renewing fossil fuel projects.³⁶ This will have a direct impact on the fossil fuel companies' ability to expand production within Montana.

2.3. HALTING FOSSIL FUEL FINANCE

Finance flowing to fossil fuels remains a major obstacle for phasing out production.³⁷ While considerable strides have been made in redirecting national, regional and multilateral public finance away from fossil fuel production, private finance continues to be wedded to fossil fuel companies and the global expansion of production. Since 2015, the 60 largest banks in the world have provided investment of almost \$7 trillion to fossil fuel production, with US banks leading the pack.³⁸ Despite the scale of continued investment, however, there are important initiatives seeking to shift finance away from fossil fuels that are gaining traction.

²⁸ Oil Change International (OCI), 2024, 'Big Oil in Court - The latest trends in climate litigation against fossil fuel companies', <https://www.actu-environnement.com/media/pdf/news-44684-big-oil-in-court-rapport.pdf>

²⁹ Ibid.

³⁰ Setzer, J. and Highman, C., 2024, 'Global trends in climatechange litigation: 2024 snapshot', <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf>

³¹ Sato et al., 2023, 'Impacts of climate litigation on firm value', https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/05/working-paper-397_-Sato-Gostlow-Higham-Setzer-Venmans.pdf

³² Ibid.

³³ BBC News, 2024, 'Key oil project must count full climate impact - court', <https://www.bbc.co.uk/news/articles/cxwwzmn12g9o>

³⁴ BBC News, 2024, 'UK government will not fight Rosebank oil field legal challenge', <https://www.bbc.co.uk/news/articles/c30393m4z50o>

³⁵ Wong, C., 2024, 'Do climate lawsuits lead to action? Researchers assess their impact', Nature, <https://www.nature.com/articles/d41586-024-01081-w>

³⁶ Marris, E., 2024, 'Truly historic': How science helped kids win a landmark climate trial', Nature, <https://www.nature.com/articles/d41586-023-02592-8>

³⁷ Newell, P., 2024, 'Towards a more transformative approach to climate finance', Climate Policy, <https://doi.org/10.1080/14693062.2024.2377730>

³⁸ Rainforest Action Network et al., 2024, 'Banking on climate chaos report 2024', <https://reclaimfinance.org/site/en/2024/05/16/banking-on-climate-chaos-report-2024/>



First agreed at the COP26 in Glasgow, Scotland, in 2021, the Clean Energy Transition Partnership (CETP) brought together 34 countries and five public finance institutions (PFIs) to commit to ending public finance for fossil fuels via development finance institutions (DFIs) and export credit agencies (ECAs). These types of public finance have been significant contributors to expanding fossil fuel production globally. ECAs, for instance, are the largest type of G20 public finance institutions supporting fossil fuel infrastructures around the world, overshadowing both Multilateral Development Banks (MDBs) and DFIs. The ECAs of the G20 governments, for instance, provide over \$32 billion in public finance to fossil fuel projects every year, approximately six times greater than the public finance flows into clean energy projects.

Since 2021, the initiative has expanded to around 40 signatories, including major fossil fuel financing countries such as Australia, the USA, and Canada. Although some major financing states remain outside the CETP, such as China, Japan and South Korea, the full implementation of the commitments by existing signatories could shift an estimated \$28 billion per year away from fossil fuel production into clean energy projects. Already the CETP is having a marked impact of public finance flows into fossil fuels. In 2023, the original signatories financed a total of at least \$5.2 billion in fossil fuels, a decrease of up to two-thirds (between \$10–15 billion) compared with the pre-CETP annual average (2019–2021).

According to IISD, most CETP signatories have eliminated or considerably reduced their fossil fuel financing, even amongst those with policies that do not match the ambition of the CETP commitment. There have, however, been some significant contraventions of the CETP commitment by the USA, Switzerland, Italy, and Germany. And while there has been substantial progress in stemming the flow of finance to fossil fuel projects, these flows have not been redirected into clean energy projects in low-income countries. According to IISD, the three biggest recipients of public finance from CETP signatories in 2023 were Spain, Poland, and the USA, which poses questions over the signatories' commitment to enabling a just and equitable global transition.

In private finance, the divestment movement continues at pace. According to the latest data from the SUS-POL Policy Tracker, there are around 1610 institutions that have at least partially divested from fossil fuels, with an estimated value of over \$40 trillion. Among specific institutions, the uptake of divestment may be nearing a tipping point. According to survey data from the Times Higher Education Impact Rankings 2024, 64% of participating universities reported having policies to withdraw from fossil fuel investments, up from 44 per cent in 2020. The same survey shows a huge uptake of divestment amongst universities in Asia, where 66% of institutions now have policies on divestment, up from 42% in 2020.

There have been other interesting developments in the governance of finance. Carbon Tracker Initiative (CTI) and Client Earth have submitted a consultation proposal to the UK's financial regulator, the Financial Conduct Authority (FCA), on company listings in the UK or Initial Public Offerings (IPO). In the submission, the two organisations call on the FCA to extend current mandatory requirements to disclosures of material climate-related risk, particularly for fossil fuel producers (and their assumptions about the future). As part of these new mandatory disclosures, the idea of an 'atmospheric viability test' on fossil fuel reserves has been suggested, whereby firms seeking to raise money through London's bond and equity markets would have to explain why they believe their fossil fuels reserves would be scientifically consistent with the goals of the Paris Agreement, alongside the existing stress tests around expected future demand and financial validity.

³⁹ OCI, 2024, 'Public Enemies: assessing MDB and G20 international finance institutions energy finance', <https://www.oilchange.org/wp-content/uploads/2024/04/G20-Public-Enemies-April-2024.pdf>

⁴⁰ Ibid.

⁴¹ IISD, 2024, 'Out With the Old, Slow With the New: Countries are underdelivering on fossil-to-clean energy finance pledge', <https://www.iisd.org/system/files/2024-08/countries-underdelivering-fossil-clean-energy-finance-pledge.pdf>

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Times Higher Education, 2024, 'Top universities pursuing sustainable development goals in 2024', <https://www.timeshighereducation.com/impactrankings#>

⁴⁸ Ibid.

⁴⁹ Carbon Tracker Initiative, 2024, 'Carbon Tracker Response to 2023 Financial Conduct Authority Consultation on UK Listings Regime Website', <https://carbontracker.org/reports/carbon-tracker-response-to-2023-financial-conduct-authority-consultation-on-uk-listings-regime-website/>

⁵⁰ IPE, 2024, 'Climate NGO's net-zero test for fossil fuel reserves included in FCA consultation', <https://www.ipe.com/news/climate-ngos-net-zero-test-for-fossil-fuel-reserves-included-in-fca-consultation/10075136.article>



2.3. INVESTOR-STATE DISPUTES

Investor-State Dispute Settlements (ISDS) are mechanisms that allow private investors – typically corporations – to sue national governments over alleged violations of investment agreements. These mechanisms are common in many bilateral investment treaties (BITs), free trade agreements (FTAs), and investment contracts to protect foreign investors from unfair treatment by host governments. Increasingly, ISDS are being acknowledged as a major barrier to the global energy transition.⁵¹ According to E3G, two gigatonnes (Gt) carbon dioxide equivalent (CO₂e) of potential annual emissions from the combustion of fossil fuels is protected by such investment treaties.⁵²

There are countless examples where ISDS are undermining efforts to phase-out fossil fuels, with fossil fuel investors making up 20 percent of total ISDS cases across all sectors within the global economy.⁵³ In 72 percent of fossil fuel-related cases, the courts ruled in favour of fossil fuel firms. In Europe, the Netherlands, Germany and Canada have all been sued over coal power phase-out policies, while Slovenia is dealing with a case related to gas fracking. In 2022, Italy lost a case over a ban on offshore oil developments.⁵⁴ Across the Atlantic, Canada is currently defending the decision to reject a proposed LNG terminal.⁵⁵

Given that ISDS maintain the dominance of fossil fuels within energy systems, governments around the world are exploring ways in which they can extract themselves from these legal arrangements. Pressure has been building within the European Union (EU) for a coordinated withdrawal from the

Energy Charter Treaty (ECT), an international trade agreement signed in 1994 that has historically benefitted fossil fuel firms and their investors. At least nine of the signatories of the ECT have expressed their desires to withdraw from the agreement, including the UK, France, Germany, Spain, and Portugal, amongst others.

Full withdrawal from the ECT, however, presents a range of challenges. In particular, the ECT has a sunset clause which gives protection to investments made prior to the withdrawal date for another twenty years.⁵⁶ Added to this, fossil fuel firms are highly adept at using subsidiaries and other corporate restructuring techniques to take advantage of the protections afforded under the ECT. For example, ExxonMobil is suing the Dutch government for accelerating the closure of the Groningen gas field, claiming it violates the Energy Charter Treaty and affects its investment. Despite exiting the ECT, Exxon is using an intra-EU dispute mechanism via a Belgium-based entity, which, while illegal under EU law, may be upheld by arbitration bodies outside EU jurisdiction.⁵⁷ This means that the legal risk under the ECT is significant, with it protecting the most oil and gas production of any investment treaty worldwide. According to experts, the range of possible total liabilities to countries that are members of the ECT could be between \$31.4 billion and \$111.5 billion, depending on commodity prices.⁵⁸ Even if the states listed above successfully navigate a full withdrawal from the ECT, they will undoubtedly be signatories to many other such investment treaties. For instance, the UK still has over 80 investment treaties with investor-state dispute settlement (ISDS) provisions, which provide similar protections to fossil fuel investments.⁵⁹

⁵¹ E3G, 2024, 'Investment treaties are undermining the global energy transition', <https://www.e3g.org/publications/investment-treaties-are-undermining-the-global-energy-transition/>

⁵² Ibid.

⁵³ Tienhaara et al., 2022, 'Investor-state disputes threaten the global green energy transition', Science, <https://www.science.org/stoken/author-tokens/ST-467/full>

⁵⁴ Acuri et al., 2024, 'Investment law v. supply-side climate policies: insights from Rockhopper v. Italy and Lone Pine v. Canada', International Environmental Agreements, <https://link.springer.com/article/10.1007/s10784-023-09622-w>

⁵⁵ ISDS Platform, 2023, 'LNG firm's \$20-billion lawsuit against Canada exposes NAFTA's toxic legacy', <https://www.isds.bilaterals.org/?lng-firm-s-20-billion-lawsuit>

⁵⁶ Energy Charter Treaty, n.d., 'Article 47: Withdrawal', <https://www.energychartertreaty.org/provisions/part-viii-final-provisions/article-47-withdrawal/>

⁵⁷ Sustainable Views, 2024, 'Exxon suing Netherlands over gas phaseout plans', <https://www.sustainableviews.com/exxon-suing-netherlands-over-gas-phaseout-plans-262bfdde/>

⁵⁸ Tienhaara et al., 2022, 'The Energy Charter Treaty's Protection of 1.5°C-Incompatible Oil and Gas Assets', BU Global Development Policy Centre, https://www.bu.edu/gdp/files/2022/06/GEGI_PB_021_FIN.pdf

⁵⁹ E3G, 2024, 'Strategic Priorities After UK Withdrawal From the Energy Charter Treaty', <https://www.e3g.org/news/strategic-priorities-after-uk-withdrawal-from-the-energy-charter-treaty/>

2.4. SUPPLY-SIDE CLIMATE CLUBS

Across various international forums, the norm of phasing out fossil fuel production is gaining traction. To support and socialise this emergent ‘anti-fossil fuel norm’,⁶⁰ a variety of global initiatives have sprung up to build capacity, share best practice and create widespread buy-in for fossil fuel phase-outs.

The campaign calling for a Fossil Fuel Treaty – a multilateral agreement to halt the expansion of fossil fuel production and streamline a rapid and fair phase-out – continues to attract support from around the world. With 13 states now endorsing the Treaty, and over a hundred cities and municipal governments calling for its creation,⁶¹ the campaign may be nearing the critical mass required for a negotiating mandate at the international level. Among those states that have endorsed the Treaty is Colombia, a state with considerable fossil fuel reserves that has publicly stated its desire to move beyond them and called for international support to do so. It is highly likely that more states will come forward to endorse the Treaty at COP29, which will further intensify the pressure to begin a formal negotiation process.

The Beyond Oil and Gas Alliance (BOGA) has grown significantly since it was launched at COP26, with Denmark and the Canadian state of Quebec as its co-chairs. The international alliance seeks to facilitate the managed phase-out of oil and gas production by elevating the issue globally, facilitating commitments and ambitious action, as well as creating a community of practice around phase-outs.⁶² BOGA currently has 15 core members comprised of national and state governments, alongside additional ‘associate members’ and ‘friends of BOGA’, which includes fossil fuel producers such as the state of California, Colombia and Italy.⁶³ BOGA is distributing grants to its members to help them plan for a fossil fuel phase-out, and advising non-members on how to move toward a phase-out.

At COP29, there is a possibility that new international alliances are launched. The new UK government, for instance, has alluded to its ambitions of launching the Global Clean Power Alliance, an initiative described as a ‘reverse OPEC’ in which the UK will facilitate the sharing of knowledge and technologies to accelerate decarbonisation and bolster innovation.⁶⁴ In a recent speech, David Lammy, Britain’s Foreign Secretary, stated that he was “firing the starting gun” on the alliance that aims to help other nations “leapfrog fossil fuels and transition to power systems with renewables at their core”.⁶⁵ This rhetoric chimes with Labour’s policy of ending new licensing for oil and gas.



⁶⁰ Green, 20218, ‘Anti-fossil fuel norms’, Climatic Change, <https://link.springer.com/article/10.1007/s10584-017-2134-6>

⁶¹ Fossil Fuel Treaty, n.d., ‘Endorsements’, <https://fossilfuel treaty.org/endorsements/#governments>

⁶² Beyond Oil & Gas Alliance (BOGA), n.d., ‘Who We Are’, <https://beyondoilandgasalliance.org/who-we-are/>

⁶³ Ibid.

⁶⁴ Financial Times, 2024, ‘David Lammy vows to put climate action at centre of UK foreign policy’, <https://www.ft.com/content/ce6c2cd0-6fd1-4eb9-a17a-686c6e7062ed>

⁶⁵ Ibid.



3. Bumps in the Road

Although policies and governance shifts that curtail fossil fuel production can arise from a variety of sources, their impact on aggregate levels of production depends on their longevity and durability over extended periods of time. Fossil fuel production and, by extension, consumption are deeply entrenched within dominant approaches to energy, growth and development. As such, supply-side policies are vulnerable to both exogenous shocks, such as wars and commodity price spikes, and endogenous shocks, like changes in government and resistance from domestic actors to supply-side policy moves. Due to these vulnerabilities, there have been a number of notable policy reversals from governments and institutions on policies that relate to fossil fuel production, including in purported 'first movers' such as New Zealand.

These policy reversals can be partly explained by:

- **Securitisation of fossil fuel production:** Over the last three years, there have been substantial shifts on global energy markets that have driven changes in domestic energy and climate policy and reconfigurations of geopolitical relations. For instance, after Russia's invasion of Ukraine, European nations quickly attempted to phase-out Russian gas, which led to domestic producers such as the UK pushing for further extraction and exporters, like the USA and Qatar, seeking to fill the global energy void. These dynamics drove a rise in planned fossil fuel production and, in some cases, curtailed governments' ambitions for restricting fossil fuel supply. We can expect to see similar developments in response to the spreading violence in the Middle East, where Iran has stated its intent to close the Hormuz Strait in response if necessary.⁶⁶ Approximately, one-quarter of total global seaborne traded oil and around one-fifth of global LNG passed through the Hormuz Strait in 2022.⁶⁷

- **Narrowing window of opportunity for extraction:** As states and international organisations publicly acknowledge the need to transition away from fossil fuels, many less established and new producers are keen to extract as much as possible before more stringent and defined end-dates for production are introduced. African states such as Mozambique, Namibia and Senegal have made large discoveries of fossil fuels and are pushing ahead with developing oil and LNG industries; a process that could take decades.⁶⁸ Elsewhere, Guyana is pushing ahead with developing its vast oil reserves, which are estimated at 11 billion oil-equivalent barrels. In an interview that later went viral, Guyana's president, Dr. Irfaan Ali, lamented a BBC journalist for lecturing him on climate change, noting that oil extraction would finance Guyana's development and adaptation to climate change, as investment from rich industrialised nations has not materialised.

⁶⁶ Reuters, 2024, 'Iran says it can close Hormuz Strait, views Israeli presence in UAE as threat', <https://www.reuters.com/world/middle-east/iran-says-israeli-presence-uae-is-threat-2024-04-09/>

⁶⁷ U.S. Energy Information Agency, 2023, 'The Strait of Hormuz is the world's most important oil transit chokepoint', <https://www.eia.gov/todayinenergy/detail.php?id=61002>

⁶⁸ Don't Gas Africa & Fossil Fuel Treaty, 2023, 'The Fossil Fuelled Fallacy: How the Dash for Gas in Africa will fail to deliver development', <https://static1.squarespace.com/static/62e211040c9b6758fb1d3467/t/636f503f9b084867049ec7eb/1668239696064/Fossil+Fuelled+Fallacy+Report>

- **Pro-fossil fuel populism:** In some states around the world, movements have supported further fossil fuel production and consumption. These dynamics have been described in several ways, such as ‘culture wars’ or ‘anti-net zero populism’,⁶⁹ but describe a widespread right-wing phenomenon where climate policy is being framed as a threat to national security, ‘values’ and competitive economic advantage by populist groups. In Germany, the far-right Alternative for Germany (AfD) managed to delay and dilute the German coalition government’s policy of banning the installation of fossil fuel heating systems in new homes by framing low carbon heating solutions as an expensive affront being pushed on the public by elite politicians.⁷⁰ Similar political trends are visible in the UK, the USA, Argentina, Colombia and many EU member states.
- **Newly elected governments:** Democratic elections can mark decided shifts in policy programmes that directly impact fossil fuel production. Sometimes a change in government can bring renewed ambition to address climate change and phase-out fossil fuel production, as is the case in the UK, but often it can stall or undermine progress as with Costa Rica and New Zealand. November’s presidential election in the USA will likely impact domestic fossil fuel production and international leadership on climate issues.

Lobbying and business pressure: The ongoing influence of fossil fuel incumbents and those that benefit from ongoing production will continue to define the parameters of fossil fuel phase-out trajectories. There are widespread concerns that the fossil fuel industry will be well represented at COP29 in Baku. Transparency International have pointed to the fact that Azerbaijan’s Ecology Minister, Mukhtar Babayev, who will oversee the climate negotiations, had previously worked at the State Oil Company of the Azerbaijan Republic (Socar) for over two decades.⁷¹ Indeed, as pressure to restrict supply continues to increase, intensified push back can be expected.

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About SUS-POL

Drawing on the fields of global political economy, international relations, sociology, geography, and transition studies, the SUS-POL project seeks to identify the political, economic, cultural, and social conditions and processes that give rise to, and help to spread, policies that seek to limit fossil fuel production and ensure that reserves remain in the ground.

By investigating the barriers and drivers to supply-side climate policies, and what motivates the actors that have implemented them, the project will generate conceptual and practical insights into how such policies can be adopted more widely across various contexts and levels of governance, and the conditions that give rise to them.

For more information about the SUS-POL project, please visit [our website](#) and follow the project on [X](#) and [LinkedIn](#).

For any additional enquiries, please contact Freddie Daley on f.daley@sussex.ac.uk or Peter Newell P.J.Newell@sussex.ac.uk

This briefing was written by Freddie Daley from the SUS-POL team at the University of Sussex

Images: <http://unsplash.com> and <http://pexels.com>

⁶⁹ Paterson, M., 2024, ‘The Rise of Anti-Net Zero Populism in the UK: Comparing Rhetorical Strategies for Climate Policy Dismantling’, Journal of Comparative Policy Analysis: Research and Practice, <https://www.tandfonline.com/doi/full/10.1080/13876988.2023.2242799>

⁷⁰ Politico, 2023, ‘How the Far-Right turned heat pumps into electoral rocket fuel’, <https://www.politico.eu/article/robert-lambrou-alternative-for-germany-heat-pump-election-climate-change/>

⁷¹ Transparency International, 2024, ‘COP29: Another alarming conflict of interest’, <https://www.transparency.org/en/blog/cop29-alarming-conflict-of-interest-climate-corruption>