



Plenary sitting

B9-0502/2022

21.11.2022

MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the outcome of the modernisation of the Energy Charter Treaty
(2022/2934(RSP))

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on behalf of the Renew Group

**European Parliament resolution on the outcome of the modernisation of the Energy Charter Treaty
(2022/2934(RSP))**

The European Parliament,

- having regard to the Energy Charter Treaty (ECT) signed in 1994 and which entered into force in 1998,
 - having regard to the Commission communication of 11 December 2019 on the European Green Deal (COM(2019)0640),
 - having regard to Commission Recommendation (EU) 2021/1749 of 28 September 2021 entitled ‘Energy Efficiency First: from principles to practice’¹ and the guidelines annexed thereto,
 - having regard to Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (Renewable Energy Directive)²,
 - having regard to Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency³,
 - having regard to the modernisation process of the Energy Charter Treaty, which was initiated in 2017, and to the EU’s text proposal thereon,
 - having regard to its resolution of 23 June 2022 on the future of EU international investment policy⁴, which called for the preparation of a coordinated exit from the ECT,
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the Energy Charter Treaty (ECT) is an international agreement which establishes a framework for cooperation in the fossil fuel industry; whereas the treaty was signed in December 1994 and came into effect in April 1998; whereas there are 53 signatories and contracting parties to the ECT, including the European Union, and Euratom and all its member states except for Italy;
- B. whereas the initial aim of the ECT was to create a forum for East-West policy cooperation in the fields of energy, investment protection, trade and transit; whereas the Treaty’s investment protection provisions have not been updated since the 1990s and are outdated in comparison to the new standards established by the EU’s reformed

¹ OJ L 350, 4.10.2021, p. 9.

² OJ L 328, 21.12.2018, p. 82.

³ OJ L 328, 21.12.2018, p. 210.

⁴ Texts adopted, P9_TA(2022)0268.

approach on investment policy;

- C. whereas the ECT has become the most litigated investment agreement in the world, with the majority of disputes being intra-EU, that is involving investors from one EU Member State against investors from another EU Member State;
 - D. whereas the Council gave the Commission in July 2019 a mandate to negotiate a profound modernisation of the ECT, since the ECT needed substantial reform both in terms of investment protection standards and reinforcement of its sustainability dimension;
 - E. whereas in May 2020, the EU submitted a proposal for the modernisation of the ECT; whereas on 15 February 2021, the EU submitted to the ECT secretariat a supplementary proposal to address the issue of the definition of economic activity in the energy sector, also known as the fossil fuel carve out; whereas 15 rounds of negotiation have taken place since July 2020; whereas the ad hoc meeting of the Energy Charter Conference on 24 June 2022 endorsed the outcome of the modernisation negotiations and gave an ‘agreement in principle’ on the resulting text;
 - F. whereas many of the EU’s Member States have expressed dissatisfaction with the ECT; whereas critics argue that the ECT is unfit to address climate change and has a chilling effect on energy-related legislation, making it a barrier to the transition towards renewable energy;
 - G. whereas Parliament will have to give its consent in order to move forward with the modernisation;
 - H. whereas as of 15 November 2022, Spain, the Netherlands, Poland, Germany, Slovenia and France have expressed their intent to withdraw from the ECT and Italy has already withdrawn;
1. Recognises that the ECT has come under heavy criticism as it is considered an obstacle to the Member States’ transition to renewable energy; considers that the current ECT is no longer compatible with the objectives of the Green Deal, the Paris Agreement or the Climate Law⁵; considers the ECT an outdated instrument which no longer serves the interest of the European Union, especially with regard to the objective to become climate neutral by 2050;
 2. Recognises the Commission’s commitment to achieving the mandate it was given regarding the modernisation negotiations, namely to exclude protection for most fossil fuel investments and to ensure the alignment of the ECT with the Paris Agreement, while preserving the EU’s ability to develop public policy measures consistent with its commitment to become the first climate neutral continent by 2050;
 3. Reiterates its call on the Commission and the Member States to start preparing a

⁵ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ L 243, 9.7.2021).

coordinated exit from the ECT and an agreement excluding the application of the sunset clause between willing contracting parties;

4. Underlines that amending the ECT requires unanimity of all contracting parties voting at the annual conference; reiterates its concerns that many contracting parties seem not to share EU ambitions in the field of climate change mitigation, sustainable development and energy transition, despite the fact that all of them are also signatories to the Paris Agreement;
5. Stresses that an alarming number of investment claims target environmental measures; regrets the fact that various countries, including the Member States, are being sued in relation to policies on climate, the phasing out of fossil fuels, or the just transition;
6. Welcomes the clarification by the Court of Justice of the European Union that investor-state dispute settlement (ISDS) provisions in the ECT are not applicable in the case of intra-EU disputes; notes with concern that the *Achmea* ruling⁶ did not deter arbitration tribunals from continuing to hear intra-EU investment disputes; calls on the Member States and the Commission, independently of the decision about whether or not to support the ECT's modernisation, to adopt an *inter se* agreement on the non-applicability of the ECT to intra-EU disputes;
7. Recalls its conditions set in previous resolution that the ECT modernisation should have moved forward from the ISDS investor-state dispute system, should have ended the protection for fossil fuel investments and should have limited the impact of the sunset clause;
8. Regrets that the outcome of the modernisation negotiations is not in line with the conditions set by Parliament and is still not in line with the EU's objectives as defined by the European Green Deal; recalls that Parliament will be asked to give its consent for the modernisation process to move forward; regrets that the modernised ECT proposal maintains protection for existing fossil fuel investments for 10 years and that new investments in fossil fuels will only be excluded after ratification by States Parties, meaning years of uncertainty; regrets that this modernisation does not allow for the establishment of a new arbitration system and that the ISDS system will still be in place; regrets that this outcome of the modernisation negotiations has not reformed the sunset clause, which means that in the event of a withdrawal, the ECT will continue to apply to the withdrawing parties for 20 years;
9. Welcomes, in this regard, the intention of several Member States to withdraw from the ECT; urges the Member States that have announced their intention to withdraw from the ECT to ask the Commission to present a plan to ensure a coordinated withdrawal of the EU from the ECT; regrets that the Commission has neither worked on this coordinated withdrawal nor shared any information about it, despite Parliament's several demands since the beginning of the modernisation negotiations, as an alternative in case of unsatisfying results or the failure of the modernisation process;

⁶ Judgment of the Court of 6 March 2018, *Slowakische Republik v Achmea BV*, Case C-284/16, ECLI:EU:C:2018:158.

10. Underlines the need to act in a coordinated manner, as Europeans and not only at Member State level, in order to be stronger in the withdrawal negotiations, to limit the negative effects of the sunset clause and to effectively ban intra-EU disputes;
11. Calls on the Commission to acknowledge the lack of support from Parliament and from many Member States in the Council for the modernised ECT and to act accordingly during the next Energy Charter Conference in announcing a coordinated withdrawal from the Treaty on behalf of the EU and its Member States;
12. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.