



Plenary sitting

B9-0513/2022

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 Verts/ALE 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 1994 Energy Charter Treaty (ECT),
 - having regard to the Commission proposal for a Council Decision on the position to be taken on behalf of the European Union in the 33rd meeting of the Energy Charter Conference (COM(2022)0521),
 - having regard its resolution of 23 June 2022 on the future of EU international investment policy¹,
 - having regard to the case law of the Court of Justice of the European Union, notably its opinion 2/15 of 16 May 2017 on the Free Trade Agreement between the EU and the Republic of Singapore², its judgment of 6 March 2018 in Case C-284/16 (preliminary ruling on *Slovak Republic v Achmea BV*)³, its opinion 1/17 of 30 April 2019 on the Comprehensive Economic and Trade Agreement between Canada and the EU and its Member States⁴, its judgment of 2 September 2021 in Case C-741/19 (preliminary ruling on *Republic of Moldova v Komstroy LLC*)⁵, and its judgment of 26 October 2021 in Case C-109/20 (preliminary ruling on *Republic of Poland v PL Holdings Sàrl*)⁶,
 - having regard to the ‘agreement in principle’ on the draft modernised ECT reached on 24 June 2022,
 - having regard to the Agreement adopted at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change in Paris on 12 December 2015 (the Paris Agreement),
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the contracting parties reached an agreement in principle on 24 June 2022 on the modernisation of the Energy Charter Treaty (ECT); whereas the legal text of the final agreement has not been formally published yet, but was leaked in September 2022;
- B. whereas Germany, France, Spain, Netherlands, Poland, Slovenia and Luxemburg have

¹ Texts adopted, P9_TA(2022)0268.

² Opinion of the Court (Full Court) of 16 May 2017, ECLI:EU:C:2017:376.

³ Judgment of the Court (Grand Chamber) of 6 March 2018, *Slovak Republic v Achmea BV*, C-284/16, ECLI:EU:C:2018:158.

⁴ Opinion of the Court (Full Court) of 30 April 2019, ECLI:EU:C:2019:341.

⁵ Judgment of the Court (Grand Chamber) of 2 September 2021, *Republic of Moldova v Komstroy LLC*, C-741/19, ECLI:EU:C:2021:655.

⁶ Judgment of the Court (Grand Chamber) of 26 October 2021, *Republic of Poland v PL Holdings Sàrl*, C-109/20, ECLI:EU:C:2021:875.

announced their decision to withdraw from the ECT; whereas Italy left the ECT in 2015; whereas other Member States are still considering the option of leaving the ECT;

- C. whereas the Intergovernmental Panel on Climate Change described the ECT as ‘a serious obstacle to climate change mitigation’ in its 2022 report on the mitigation of climate change, issued in April 2022;
 - D. whereas the EU has unilaterally committed to a carve out for the protection of fossil fuel investments; whereas such a carve out would apply as of 15 August 2023 and only for investments made after that date, while for investments made before that, a 10-year phase out would apply;
 - E. whereas many contracting parties, including high-income industrialised countries, seem not to share the EU’s level of ambition as regards modernising the ECT, despite the fact that they are all also signatories to the Paris Agreement;
 - F. whereas the number of investor-state dispute settlement (ISDS) cases is rising each year; whereas the ECT is the most litigated investment protection agreement; whereas more than 40 intra-EU investment arbitration cases are currently ongoing; whereas in many recent cases, regulatory measures relating to renewable energy have been litigated, thereby exacerbating the risk of regulatory chills negatively affecting the energy transition;
 - G. whereas global efforts to combat climate change require a rapid transition to renewable energy and swift government action to reduce reliance on fossil fuels, which require excluding investment in fossil fuels from ECT protection; whereas Member States still have thousands of bilateral investment treaties (BITs) that still protect fossil fuel investments and contain outdated provisions and mechanisms that are incompatible with the EU’s values and principles of law;
 - H. whereas available empirical evidence has not shown a direct causal relationship between international investment agreements and attracting foreign direct investment;
 - I. whereas Parliament has already expressed the position that the EU and its Member States should not sign or ratify investment protection treaties that include the ISDS mechanism;
- 1. Welcomes the Commission’s efforts to reform the ECT;
 - 2. Welcomes the EU’s and the UK’s intention to carve out fossil fuel investments from ECT protection; regrets however that no other contracting parties have undertaken such a commitment; deplores the broad exceptions for gas-related investments that are defined as significantly harmful under EU law; regrets that these exceptions would afford extensive protection to such investments in the future;
 - 3. Considers the flexible approach taken by the modernised text to be insufficient to align the ECT with the Paris Agreement; regrets that all fossil fuel investments remain covered by default; regrets that the scope has been expanded to include new energy materials like hydrogen, anhydrous ammonia, biomass, biogas and synthetic fuels, and new activities like carbon capture, utilisation and storage technologies, risking new

investor to state arbitration cases under the old style of ISDS arbitration;

4. Stresses that for the EU, the starting date for the 10 years of remaining protection for existing investment in fossil fuels depends on the provisional application of the modernised treaty; stresses that the modernised ECT can only be used as the basis for new claims if the host state and the respondent states both provisionally apply the modernised ECT; deeply regrets the lack of clarity this situation creates, as it generates a piecemeal implementation and delays and risks prolonging the application of the non-reformed ECT;
5. Regrets that the provisions on sustainable development and the Paris Agreement in the modernised ECT are of aspirational nature only;
6. Deeply regrets that the modernised ECT still provides for private arbitrators as adjudicators; stresses the considerable evidence of investment arbitrators disregarding states' intent to protect their public policy objectives, especially when it comes to phasing out fossil fuels or the protection of the environment; stresses that the modernised ECT does not provide an appeal mechanism;
7. Worries that the 20-year sunset clause in case of exit remains unchanged in the modernised text, thus still depriving the countries remaining party to the ECT of the possibility of easily leaving the treaty should arbitrators continue to undermine states' ability to regulate;
8. Regrets that the modernised ECT fails to address the critical issue of valuation techniques, enabling awards of compensation that vastly outweigh the amounts invested;
9. Notes that the modernised ECT has not received the support of a qualified majority of EU Member States in the Council, and notes the collapse of the modernisation efforts; rejects a postponement of both the vote on the Council Decision and the Energy Charter Conference, which risks creating a dangerous limbo situation; is of the opinion that neither the EU nor its Member States can stay party to the current ECT because of its incompatibility with EU law;
10. Welcomes the decision of eight Member States representing over 70 % of the EU population to exit the ECT, and notes that in most of the cases, such a decision was taken based on the outcome of the modernisation process; urges the Commission to propose the withdrawal of the EU from the ECT and calls on the Council to support such a proposal; takes the position that Parliament will support the coordinated exit when requested to consent to it; calls on other contracting parties to consider withdrawing from the ECT;
11. Welcomes the Commission's draft of an *inter se* agreement clarifying that the ECT and its sunset clause do not, and never did apply, in an intra-EU context; calls on the EU Member States to ratify such agreements as soon as possible in parallel to the ratification process for the EU's coordinated withdrawal; calls on the Commission to reach out to partner countries and propose a second agreement allowing non-EU ECT contracting parties willing to withdraw to neutralise the sunset clause on a reciprocal basis;

12. Calls for the EU and its Member States to conclude an additional *inter se* agreement to modify the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in order to clarify that EU courts will not enforce intra-EU awards based on the ECT;
13. Calls on the Member States exiting the ECT to terminate all their BITs with other ECT parties, and to modify or terminate all BITs containing ISDS, protecting fossil fuel investments or containing outdated protection standards;
14. Calls on the Commission to expressly support including within the UN Commission on International Trade Law process and outputs a mechanism by which states can efficiently withdraw consent to ISDS from their treaties, or terminate their treaties;
15. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Secretariat of the Energy Charter Treaty and the governments of the member countries of the Energy Charter Treaty.