

EN  
P-003556/2022  
Reply  
(13.4.2023)

The Council did not agree on a common position on the modernisation of the Energy Charter Treaty (ECT).

The modernisation of the ECT was accordingly withdrawn from the Energy Charter Conference agenda of 22 November and in principle will be further discussed during an ad hoc meeting of the Energy Charter Conference scheduled to take place in April 2023. Discussions have recently been launched within the Council on the options for a way forward regarding the EU, Euratom and Member States' membership in the Energy Charter Treaty and possible measures regarding the application of the sunset clause.

Adoption of the amended ECT would be without prejudice to possible future withdrawal. In the absence of adoption of the amended ECT or of any further amendments in this regard, the existing ECT and the conditions thereof continue to apply.

The draft amended ECT contains several provisions related to sustainable development and climate change. In particular, it excludes protection for all new investments in fossil fuels in the EU as of 15 August 2023, with a transition period for hydrogen/low-carbon gas-ready gas power plants. It also excludes protection for existing investments in fossil fuels in the EU as of 10 years after the entry into force or entry into provisional application of the amendments to the ECT, and by 31 December 2040 at the latest. In a dedicated article, the draft amended ECT reaffirms the right to regulate, while safeguarding the right to adopt measures in pursuit of legitimate policy objectives, including as regards the fight against climate change and the clean energy transition. Furthermore, the commitment to implementing the Paris Agreement is reaffirmed in a new article about sustainable development.

In relation to the intra-EU application of the ECT, the draft amended ECT contains a clause that clarifies the understanding of all contracting parties that provisions on investor-state and state-to-state dispute settlement, notably, do not apply to intra-EU cases. Furthermore, on 5 October 2022, the Commission released a Communication on an agreement between the Member States, the European Union, and the European Atomic Energy Community on the interpretation of the Energy Charter Treaty . The draft agreement attached to the Communication, which is currently discussed with the Member States within a special group established by the Commission, aims at further clarifying that the ECT in its entirety does not apply intra-EU.