Resolution on the outcome of the modernisation of the Energy Charter Treaty

2022/2934(RSP) - 24/11/2022 - Text adopted by Parliament, single reading

The European Parliament adopted by 303 votes to 209, with 63 abstentions, a resolution on the outcome of the modernisation of the Energy Charter Treaty (ECT).

The text adopted in plenary was tabled as a joint resolution by the S&D, Renew, Greens/EFA and The Left groups.

The ECT is an international agreement which was signed in December 1994 and came into effect in April 1998. There are 53 signatories and contracting parties to the ECT, including the European Union, and Euratom and all its Member States except for Italy, which withdrew in 2016.

The EU and its Member States represent over half of the voting membership of the ECT.

In the light of the growing legal and political concerns about the ECT, a modernisation process driven by the EU and its Member States was initiated in November 2018, focused on investment protection standards, as well as on the limitation of the protection granted to fossil fuels and on fostering sustainable development.

The Council gave the Commission a mandate to negotiate a modernisation of the ECT in July 2019 and in May 2020, the EU submitted a proposal for the modernisation of the ECT. The contracting parties reached an agreement in principle on 24 June 2022 on the modernisation of the ECT. The amendments to the Treaty include changes to the ECT's investment protection standards and a reference to the right of countries to take regulatory action for reasons such as environmental protection or climate action.

Since the conclusion of negotiations, Germany, France, Spain, the Netherlands, Poland, Slovenia and Luxembourg, who combined represent more than 70 % of the EU's population, announced their intention to withdraw from the ECT (Italy left the ECT in 2016). Other Member States are still considering the option of leaving the ECT.

Recognising that the ECT has come under heavy criticism, Parliament considers the current ECT an **outdated instrument** which no longer serves the interest of the European Union, especially with regard to the objective to become climate neutral by 2050. It underlined that the final text of the modernised ECT integrates elements of the negotiating mandate given to the Commission, is not aligned with the Paris Agreement, the EU Climate Law or the objectives of the European Green Deal, is not in line with the objectives laid down by Parliament in its resolution of 23 June 2022 on the future of EU international investment policy, including, most notably:

(a) the immediate prohibition of fossil fuel investors from suing contracting parties for pursuing policies to phase out fossil fuels, in line with their international commitments,

(b) the significant shortening of the time frame for phasing out the protection of existing investments in fossil fuels,

(c) and the removal of the ISDS mechanism.

Parliament noted that the modernised ECT proposal maintains protection for existing fossil fuel investments for at least **10 years**. The 10-year countdown would start from the entry into force of the modernised ECT, a period that would begin on 15 August 2023 if the EU, its Member States and the other contracting parties were to agree to provisionally apply the agreement, and that it would otherwise only start after ratification by three quarters of contracting parties, extending protection for fossil fuel investment for a period close to the 20 years provided for in the ECT sunset clause.

The modernised ECT sets a **cut-off date of 2040**, by which all investments in fossil fuels will no longer be protected in the case of contracting parties opting in to the carve-out. Members expressed great concern that this time line is at odds with current knowledge on the speed of fossil fuel phase-out needed to limit global warming to 1.5ºC above pre-industrial levels and that it will undermine the EU's climate objectives. They regretted the fact that, under the modernised ECT, most contracting parties have decided to maintain the protection of fossil fuel investors indefinitely.

Parliament recalled its position that the EU and its Member States should not sign or ratify investment protection treaties that include the ISDS mechanism, regretting the fact that the modernised ECT maintained this outdated dispute settlement mechanism. It supports the ongoing negotiations in UNCITRAL Working Group III, in which the EU and its Member States are working towards the creation of the Multilateral Investment Court (MIC), which could become the EU's competent body for the resolution of international investment disputes.

Members are worried that the **20-year sunset clause** in case of exit remains unchanged in the modernised text and regrets that this was not part of the EU's negotiating mandate, thus continuing to deprive countries that remain parties to the ECT of the possibility to easily leave the treaty should arbitrators continue to undermine states' ability to regulate.

Members welcomed the announcement by the Polish, Spanish, Dutch, French, Slovenian, German and Luxembourg governments of their intention to withdraw from the ECT and note that, in most cases, the decision has been taken on the basis of the outcome of the modernisation process.

Parliament recalled that it has asked the Commission and the Member States to start preparing a **coordinated exit from the ECT** and an agreement to waive the application of the sunset clause between those contracting parties who wish to do so. It recalled that the EU can only ratify the modernised ECT with Parliament's final consent, and that Parliament will examine its previous positions and the shortcomings of the modernisation if requested to consent to it. Members believe that **Parliament will support the EU's exit from the ECT** when asked to consent to it.

The resolution stressed the need to act in a coordinated way, in order to be stronger in the withdrawal negotiations, to limit the negative effects of the sunset clause and to effectively prevent any disputes within the Union. The Commission is called upon to immediately initiate the process leading to a **coordinated exit** of the EU from the ECT and the Council is asked to support this proposal.