

Energy Charter Treaty: withdrawal of the Union

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PURPOSE: to withdraw the Union from the Energy Charter Treaty.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the Energy Charter Treaty was concluded by the Union by Council and Commission Decision 98/181/EC, ECSC, Euratom and entered into force on 16 April 1998. The European Union is a Contracting Party to the ECT, together with Euratom, 26 EU Member States (as of 8 May 2023), as well as Japan, Switzerland, Turkey and most countries from the Western Balkans and the former USSR, with the exception of Russia and Belarus.

In the absence of any substantial update of the Agreement since the 1990s, the Agreement became increasingly outdated. In 2019, the Contracting Parties to the Agreement engaged in negotiations aimed at modernising the Agreement in order to bring it into alignment with the principles of the Paris Agreement, the requirements of sustainable development and the fight against climate change, as well as with modern standards of investment protection.

The Contracting Parties concluded the negotiations on 24 June 2022. The negotiated outcome was meant to be adopted at the 33rd meeting of the Energy Charter Conference on 22 November 2022. Ahead of the meeting of the Conference, the Union was unable to find a common position on the modernisation of the Agreement.

In the absence of a Union position, the adoption of the modernised Agreement by the Energy Charter Conference is impossible. The current, unmodernised Agreement continues to apply to the Union, in spite of the fact that it is not in line with the Union's investment policy and law, including in particular the principle of autonomy of Union law, and with the Union's energy and climate goals.

With no alternative available, it is therefore necessary for the Union to withdraw from the Agreement.

CONTENT: the Commission's proposal concerns a Council decision on the **withdrawal from the Union of the Energy Charter Treaty** in accordance with Article 47.1 of that Treaty.

According to the Commission, remaining a Contracting Party to the current, unmodernised ECT is not an option for the EU or its Member States, as the current, unmodernised Treaty is not in line with the EU's investment policy and law and with the EU's energy and climate goals.

The provisions of the Treaty as regards investment protection, including the investor-to-State dispute settlement (ISDS) mechanism, are not in line with the EU approach to investment protection. In particular, the unmodernised ECT is incompatible with the principle of autonomy of Union law.

In addition, the protection granted to fossil fuels does not fit with EU objectives as defined in the European Green Deal, the REPowerEU Plan or the Climate Law – namely: to accelerate the shift away from fossil fuels and towards renewable energy, to achieve a greater energy independence, ensure the EU's energy security, and, not least, deliver on the commitment to cut emissions by at least 55% by 2030 and to reach climate neutrality by 2050.

