



**2023/0273(NLE)**

2.4.2024

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## **DRAFT RECOMMENDATION**

on the draft Council decision on the withdrawal of the Union from the Energy Charter Treaty  
(06509/2024 – C9-0059/2024 – 2023/0273(NLE))

Committee on International Trade  
Committee on Industry, Research and Energy

(Joint committee procedure – Rule 58 of the Rules of Procedure)

Rapporteurs: Anna Cavazzini, Marc Botenga

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision on the withdrawal of the Union from the Energy Charter Treaty  
(06509/2024 – C9-0059/2024 – 2023/0273(NLE))**

**(Consent)**

*The European Parliament,*

- having regard to the draft Council decision (06509/2024),
  - having regard to the Energy Charter Treaty, signed in Lisbon on 17 December 1994, and in particular Article 47 thereof,
  - having regard to the request for consent submitted by the Council in accordance with Articles 194(2) and 207(4), first subparagraph, and Article 218(6), second subparagraph, point (a)(v) of the Treaty on the Functioning of the European Union (C9-0059/2024),
  - having regard to Rule 105(1) and (4), and Rule 114(7) of its Rules of Procedure,
  - having regard to the joint deliberations of the Committee on International Trade and the Committee on Industry, Research and Energy under Rule 58 of the Rules of Procedure,
  - having regard to the recommendation of the Committee on International Trade and the Committee on Industry, Research and Energy (A9-0000/2024),
1. Gives its consent to the withdrawal of the Union from the Energy Charter Treaty;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the Contracting Parties of the Energy Charter Treaty.

## EXPLANATORY STATEMENT

The Energy Charter Treaty (ECT) is a multilateral trade and investment agreement applicable to the energy sector that was signed in 1994 and entered into force in 1998. The European Union is a Contracting Party to the ECT, together with Euratom, 23 EU Member States, as well as Japan, Switzerland, Turkey and most countries from the Western Balkans and the former USSR, with the exception of Russia and Belarus which signed the agreement in 1994 but never ratified it.

Eleven Member States (Germany, France, Spain, Netherlands, Italy, Poland, Slovenia, Luxembourg, Denmark, Ireland, Portugal) and the UK, representing more than 70% of the European population, have already decided to exit the ECT. The withdrawal of the EU is the next logical step.

The ECT is the most used investment treaty by multinational corporations to sue countries and the number of investor-state dispute settlement (ISDS) cases is rising each year. As of 1 December 2023, there were 162 known investment arbitration cases initiated under the Energy Charter Treaty, out of which around 70% are intra-EU ECT-based investment arbitration cases. An increasing number of legal proceedings target environmental measures.

Scientists have repeatedly warned that averting severe climate crises will demand accelerating the phase-out of fossil fuels and a rapid transition to renewable energy. The protection of fossil fuel investments under the ECT is in direct contradiction with the need to move away from coal, oil and gas and other climate policies. The ECT has enabled multinational fossil fuel corporations to sue European governments that implemented policies aimed at phasing out fossil fuels or advancing a just energy transition. Recent cases demonstrate that the ECT not only obstructs climate action but also hinders states' ability to navigate the energy crisis and transition. In 2021, German coal firms RWE and Uniper sought €2.4bn in damages from the Dutch government over its 2030 coal phase-out deadline. In 2022, Italy was ordered to pay British oil company Rockhopper € 250 million in compensation for its decision to ban offshore oil developments along the coastline, a practice that was denounced by Italian coastal communities. And, last November 2023, the oil company Klesch Group Holdings Limited sued the EU, Germany and Denmark for at least €95 million over windfall taxes introduced under the Council Regulation (EU) 2022/1854 to counter the economic impact of high energy prices.

The proposed EU withdrawal from the Energy Charter Treaty is a result of years of mobilisation by numerous associations to exit a treaty that protects the financial interests of multinational fossil fuel corporations at the expense of regulatory autonomy and an effective social climate transition. In 2021, over 1 million European citizens called on EU countries “to pull out from the ECT”. Climate activists, trade unions, scientists, academics, and a broad number of social movements joined voices to expose the dangers of this treaty and repeatedly called on countries to exit. In addition, the European Parliament called for the withdrawal from the Energy Charter Treaty in its resolution of 24 November 2022 on the outcome of the modernisation of the Energy Charter Treaty.

In the absence of any substantial update of the ECT since the 1990s, a modernisation process was initiated in November 2018 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.

However, the proposed text of the modernised ECT fails to align with the Paris Agreement<sup>1</sup>, the EU Climate Law<sup>2</sup>, or the objectives of the European Green Deal<sup>3</sup>. The modernisation also fails to comply with key elements of the EP resolution of 23 June 2022 on the future of EU international investment policy, which stated that the ECT should “immediately prohibit fossil fuel investors from suing contracting parties for pursuing policies to phase out fossil fuels in line with their commitments under the Paris Agreement”. The modernised ECT has also failed to convince a qualified majority of Member States in the Council, which is why the EU did not receive a mandate to go ahead with the adoption of the modernisation at the Energy Charter Conference of November 2022.

Moreover, as long as the European Union is still a member of the ECT, even the EU Member States that have already left the ECT can still be sued for pursuing EU policies.

Therefore, the Rapporteurs consider that remaining a Contracting Party to the ECT is not an option and welcome the Commission’s proposal on the withdrawal of the Union from the Energy Charter Treaty.

The Rapporteurs invite the Commission to continue promoting a coordinated exit of all Member States in order to limit the negative effects of the sunset clause and to effectively prevent intra-EU disputes.

The Rapporteurs call on the Commission to continue its efforts to reach agreement with the Member States on an inter-se agreement that would codify the interpretation that the ECT does not apply and was not meant to apply to disputes between a Member State and an investor of another Member State concerning an investment made by the latter in the first Member State. Furthermore, they call 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.

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<sup>1</sup> 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)

<sup>2</sup> 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 (‘European Climate Law’)

<sup>3</sup> Commission communication of 11 December 2019 on the European Green Deal (COM(2019)0640)

## **ANNEX: ENTITIES OR PERSONS FROM WHOM THE RAPPORTEURS HAVE RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur Anna Cavazzini and the rapporteur Marc Botenga declare that they have received input from the following entities or persons in the preparation of the draft report:

Table 1. Input received by Anna Cavazzini

<b>Entity and/or person</b>
Climate Action Network Europe (CAN Europe)
DG ENER, European Commission

Table 2. Input received by Marc Botenga

<b>Entity and/or person</b>
Climate Action Network Europe (CAN Europe)
Friends of the Earth Europe

The lists above are drawn up under the exclusive responsibility of the rapporteurs.