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LIMITE

PE-QE 49

## REPLY TO PARLIAMENTARY QUESTION

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From: Working Party on General Affairs

To: Permanent Representatives Committee/Council

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Subject: DRAFT REPLY TO QUESTION FOR WRITTEN ANSWER

P-003556/2022 - Marie-Pierre Vedrenne (Renew), Pascal Canfin (Renew), Christophe Grudler (Renew), Stéphane Bijoux (Renew), Valérie Hayer (Renew), Ilana Cicurel (Renew), Laurence Farréng (Renew), Nathalie Loiseau (Renew), Bernard Guetta (Renew), Gilles Boyer (Renew), Max Orville (Renew), Pascal Durand (Renew), Sylvie Brunet (Renew)

'Modernisation of the Energy Charter Treaty'

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1. Delegations will find attached:
  - the text of the above question for written answer;
  - a draft reply prepared by the Working Party on General Affairs at its meeting on 27 March 2023.
2. This draft reply is submitted to the Permanent Representatives Committee (Part 1) and to the Council for approval.

**Priority question for written answer P-003556/2022  
to the Council**

Rule 138

**Marie-Pierre Vedrenne** (Renew), **Pascal Canfin** (Renew), **Christophe Grudler** (Renew), **Stéphane Bijoux** (Renew), **Valérie Hayer** (Renew), **Ilana Cicurel** (Renew), **Laurence Farreng** (Renew), **Nathalie Loiseau** (Renew), **Bernard Guetta** (Renew), **Gilles Boyer** (Renew), **Max Orville** (Renew), **Pascal Durand** (Renew), **Sylvie Brunet** (Renew)

Subject: Modernisation of the Energy Charter Treaty

Italy, Spain, Poland, the Netherlands and France have decided to withdraw from the Energy Charter Treaty, and other countries are also considering it. One by one, they have all come to the same conclusion: the proposed modernisation is insufficient. The treaty is not compatible with the Paris Agreement.

1. Without a majority in favour of the treaty's modernisation, how will the Council pave the way for a coordinated exit from the treaty to abolish the sunset clause?
2. In the context of this modernisation, how will it give effect to Member States' right to regulate, while respecting the objectives of the European Green Deal and of the Paris Agreement?
3. How will it stop prosecutions within the EU?

**Supporter<sup>1</sup>**

Submitted: 28.10.2022

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<sup>1</sup> This question is supported by a Member other than the authors: Irène Tolleret (Renew)

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.

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