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Brexit 2.0: The United Kingdom Leaves the Energy Charter Treaty

Sebastian Wuschka (Luther Rechtsanwaltsgesellschaft mbH) · Sunday, June 16th, 2024

At the end of February 2024, the United Kingdom (“UK”)’s Energy Security and Net Zero Minister Graham Stuart announced his country’s decision to withdraw from the Energy Charter Treaty (“ECT”). On 28 May 2024, the Energy Charter Secretariat revealed in a [press release](#) that the UK’s formal [notification of withdrawal](#) had already been received by the treaty’s depositary, Portugal, on 26 April 2024. The UK will follow a number of European Union (“EU”) countries that either have already or will soon formally declare their exit from the ECT (see, in that regard, the ECT Secretariat’s [press release of 7 March 2024](#)).

Similar to the position taken by those countries, the UK’s decision to leave the ECT is motivated by the lack of progress with the ECT [modernization process](#). Notably, however, the [EU Commission](#) proposed that EU member states should not further block the ECT’s modernization only a few days after the UK’s announcement of its intention to withdraw, and later set out a [more detailed roadmap](#) to that effect.

This post addresses the legal parameters for the UK’s withdrawal and its interaction with the modernization efforts.

The Framework for the UK’s Withdrawal

Withdrawal from and amendments to the ECT are quite technical matters. And so is their interplay (for a more detailed account of the relevant questions, see [Kehl & Wuschka, ZEuS 2024](#), 59 (67 et seq.)). A withdrawal takes effect one year after the receipt of the notification of withdrawal by the ECT’s depositary under Article 47(2) of the ECT, leading to the UK’s withdrawal becoming effective on 27 April 2025 (as also noted in the ECT Secretariat’s [press release](#)). Once this period has expired, the withdrawing state has effectively terminated its membership. Importantly, however, the ECT continues to apply for pre-existing and qualifying investments under its sunset clause, Article 47(3), for another 20 years.

At the same time, Article 36(1) lit. a of the ECT requires “unanimity” among the contracting parties “present and voting” for an ECT amendment to be adopted. An amendment, in turn, will take effect 90 days after its ratification by $\frac{3}{4}$ of the ECT membership under Article 42(4) ECT. In line with the definition in Article 1(2) of the ECT, states in their one-year “withdrawal period”

under Article 47(2) of the ECT also count as contracting parties for these purposes. During that period, their voting behavior will play a role for the quora of Articles 36(1) lit. a and 42(4) ECT, and consequently for the conclusion of the ECT modernization process.

Under Article 42(4) of the ECT, amendments only “enter into force between Contracting Parties having ratified, accepted or approved them”. Conversely, the relationship between those treaty parties that would have ratified the modernized ECT and those that have not (and amongst those which have not), will remain governed by the pre-existing and “unmodernized” ECT (cf. also Articles 40(4) and 30(4) lit. b of the Vienna Convention on the Law of Treaties).

The UK’s Role in the Modernization Process and Its Continuing Obligations Under the ECT

The ECT does not explicitly regulate which version of the treaty – the “old” or the “modernized” one – continues to apply for a departing contracting party under the sunset clause if and when the modernization takes effect. Yet, in line with the above, states that declare their withdrawal after their own ratification of the modernized ECT and its ratification overall by $\frac{3}{4}$ of the members will fall under the modernized framework. Only the modernized ECT would continue to bind such a state under the sunset clause once the one-year withdrawal period ends.

By contrast, states that complete that one year in the grey zone between the adoption of the modernized ECT and the modernized ECT’s entry into force will still be bound by the “old ECT” for another 20 years under the sunset clause. Indeed, their withdrawal would become effective at a time when the modernized treaty would not have become binding on them. Hence, a continuity of binding obligations could only be established with respect to the treaty prior to its modernization.

In already formally notifying its withdrawal, the UK has therefore put itself into a position where it can no longer influence under which version of the ECT it will sail into the sunset. And it appears unlikely that the political momentum would allow for ratification of the amendments by the necessary $\frac{3}{4}$ of ECT contracting parties before 27 April 2025, the effective date of the UK’s withdrawal. Considering the revived political interest in the modernization process after the UK made its intention to withdraw known, one would have expected the UK government to delay its formal notification of withdrawal further.

Consequences of the Withdrawal for Investment Protection in the UK in Energy Matters

The likely consequence of the UK’s notification of withdrawal in April 2024 is that the ECT in its current and “unmodernized” form will continue to protect pre-existing investments in the UK from 2025 until 2045. This protection inevitably also includes investments in fossil energies, whereas such investments would not have received the same level of protection for that time under the modernized ECT. Indeed, the ECT’s contracting parties had negotiated a “flexibility mechanism” for the modernized ECT. Under that mechanism, contracting parties could unilaterally exclude fossil fuels from the ECT’s protections. The EU and the UK had further already agreed on a carve-out for fossil fuels from the ECT’s investment protections, which would have also limited the protection for pre-existing investments to ten years from the modernized ECT’s entry into force. Additionally, no fossil fuel-related investments would have enjoyed protection under the modernized ECT after 31 December 2040, regardless of the date of the amendment’s entry into

force (see further on these issues [Kehl & Wuschka, ZEuS 2024](#), 59 (63 et seq.)).

At the same time, the UK's investment treaties of general coverage remain applicable next to the sector-specific ECT. As a front-runner regarding the conclusion of investment treaties, according to [UNCTAD data](#), the UK has signed a total of 110 bilateral investment treaties ("BITs") over the last almost 49 years (the first two with Egypt and Singapore in 1975, the latest with Colombia in 2010). While some of these treaties have already been terminated or are not in force, the majority are.

Amongst the UK's treaty partners are or also were many of today's EU member states, mostly those which joined the Union during the 2004, 2007, and 2013 enlargements towards Eastern Europe and the Western Balkans. BITs are still in place between the UK and Bulgaria, Croatia, the Czech Republic, Lithuania, and Slovenia. Other agreements – including those with Estonia, Hungary, Latvia, Malta, Romania, Slovakia, and Poland – were terminated more recently, mostly in 2021 and partly by consent. Yet, these agreements may also continue to apply under their respective sunset clauses. By contrast, the UK has never been a party to BITs with economically central EU member states such as, *inter alia*, Germany, France, the Netherlands, Belgium, Spain, and Italy. Next to the ECT, such states would only be covered at present (as also all the other EU member states) by the [EU-UK Trade and Cooperation Agreement](#), which does not provide for traditional investor-state arbitration (on these aspects, see [Peters & Wuschka, ICSID Review 2023](#), 39).

The Irony of Pre-modernization Withdrawal

In light of the above, the UK's withdrawal – in particular considering its timing – brings out even more the irony of the present move towards exiting the ECT amongst many states. Arguing that the Brexit from the ECT "[will support the UK's transition to net zero and strengthen its energy security](#)", the withdrawal actually creates a scenario where fossil fuel investments will very likely continue to be protected for a greater extent of time than they would have been under the modernized ECT.

While this irony is also inherent to the other states' arguments that follow the same approach (e.g. Germany and France), the UK's case is special. At a time when a renewed interest in the completion of the ECT's modernization process became apparent, it has brought itself into a position where it cannot even influence itself anymore which framework – the "old ECT" or the "new ECT" that restricts protection for fossil fuel investments – will continue to bind it under the sunset clause.

At the same time, from 27 April 2025 onwards, new energy investments – especially those in the renewable energy sector that are urgently needed for the energy transition – will cease to be protected in the UK (and equivalent investments by UK investors abroad) under the ECT. Such investments may still be covered under investment treaties of general application, which – in another ironic twist – the UK government so far has apparently not identified as a hindrance to its climate policies. From the perspective of the promotion and protection of international investment generally, there is hence hope that the idiosyncratic approach the UK government takes to the ECT will not be extended to the UK's other investment treaties.

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