

Kluwer Arbitration Blog

2024 in Review: Renewed Momentum and Key Developments for the Energy Charter Treaty

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2024 witnessed significant developments concerning the Energy Charter Treaty (“ECT”), ranging from a new wave of [withdrawals](#) to the adoption of the modernised ECT in December. This post reviews the key ECT-related developments of 2024 and highlights relevant contributions published on the Kluwer Arbitration Blog (“KAB”).

New Wave of Withdrawals from the ECT

In 2024, European countries kept withdrawing from the ECT, with the following countries notifying their withdrawal: the [Netherlands](#), [Portugal](#), [Spain](#), and the [United Kingdom](#) (“UK”). Additionally, the [European Union](#) (“EU”) withdrew from the ECT. These withdrawals were primarily driven by [concerns](#) that the ECT was too protective of fossil fuel investments and incompatible with modern climate goals. Withdrawal does not immediately terminate investment protection, as the treaty may remain applicable to investments made before the withdrawal takes effect for an additional 20 years ([sunset clause](#)). For this reason, as outlined below, the EU has issued decisions and declarations regarding the ECT’s applicability despite its subsequent withdrawal.

[Sebastian Wuschka](#) explored the legal aspects surrounding the UK’s withdrawal and its impact on the ECT’s modernisation. Wuschka examined the withdrawal process, the rules governing the ECT’s amendment, the UK’s role in the modernisation process, its continuing obligations under the ECT, and the consequences of withdrawal for investment protection. Interestingly, Wuschka highlighted that the UK’s withdrawal could result in fossil fuel investments being protected longer than they would have been under the modernised ECT. Furthermore, the author noted that new energy investments, including those in renewable energy, will not be protected in the UK (nor would UK investors abroad) under the ECT. Wuschka highlighted the “irony” between the UK’s decision to withdraw from the ECT to support the net-zero transition and its actual effects.

[Anna De Luca](#) discussed the withdrawal of the EU and several member states, describing this epilogue as a “blow” to the ambition of the EU as a leader in renewable energies and an unfortunate sign of instability during a period of geopolitical uncertainty and competition among major powers. De Luca also explored whether the [EU’s 2021 proposal](#) to carve out fossil fuel

investments from protection under the ECT contributed to the breakdown of the modernisation process within the EU. Additionally, she examined whether such carve-outs conform to the international rule of law and are necessary for addressing climate change, concluding that their status is “uncertain”.

The EU’s Decision to Deny Benefits under the ECT to Investors and Investments tied to Russia and Belarus

A few days prior to the EU’s withdrawal notification, the Council of the EU adopted a [decision](#) exercising the right under [Article 17 ECT](#), on its behalf and on behalf of the EU member states, to deny protection to: (i) corporate investors owned or controlled by nationals of Russia or Belarus that have no substantial business activities in the contracting party in which they are organised (Article 17(1) ECT); and (ii) investments of an investor of Russia or Belarus (Article 17(2)(b) ECT).

[Graham Coop and Amaia Rivas Kortazar](#) discussed the European Commission’s [proposal](#) preceding the Council’s decision, focusing on its content, legal basis in EU law, and international legal aspects. From the perspective of EU law, the authors acknowledged that the Council can, upon Commission proposal, suspend the application of an international agreement. However, they questioned whether the proposal amounted to a “suspension” of the ECT with respect to Russia and Belarus, noting that the concept of “suspension” suggests a temporary measure, while Article 17 ECT does not expressly provide for the temporary denial of benefits. Moreover, the authors raised the question whether the EU was competent to exercise Article 17 on behalf of its member states or if it could do so only on its behalf. From the perspective of international law, the authors questioned whether the proposal under Article 17(2)(b) ECT – a provision aimed at giving effect to sanctions – exceeded the object and purpose of that provision by potentially denying benefits to all investors from the third states concerned (including investors that have not been sanctioned). Lastly, the authors highlighted a timing issue associated with Article 17 ECT, noting diverging opinions on when a denial of benefits clause can be invoked – whether it must be before an investor makes an investment, at any point before a dispute crystallises, or even after a dispute has materialised.

EU Member States’ Diverging Declarations on the Intra-EU Applicability of the ECT

The day before notifying its withdrawal from the ECT, the EU, along with 26 member states, signed a [declaration](#) to disapply the ECT in pending and future intra-EU arbitrations brought under the ECT’s sunset clause. On that same day, Hungary adopted a [separate declaration](#), asserting that the non-application of the ECT in intra-EU disputes should be pursued in compliance with the [Vienna Convention on the Law of Treaties](#) (“VCLT”) and relevant principles of public international law.

[Veronika Korom and Szabolcs Nagy](#) analysed the content and potential effects of both declarations and discussed whether it is legally possible to disapply the ECT in intra-EU disputes without the adoption of the modernised ECT. Regarding the majority declaration, the authors noted that if it were to be considered an agreement on the interpretation of a multilateral treaty, its validity would require the participation of all contracting parties to the treaty, as stipulated by Article 31 VCLT –

a condition not met. Furthermore, the authors emphasised that, under Article 31, interpretation cannot alter or amend the provision being interpreted, let alone eliminate it, which, in their view, was the intent behind the declaration. The authors further stated that if the declaration were treated as a modification of a multilateral treaty among certain parties under Article 41 VCLT, it would still fail to satisfy Article 41's requirements, as it could negatively affect the rights of non-EU contracting parties to the ECT. Regarding Hungary's declaration, the authors observed that it differed from the majority declaration by not disputing the ECT's application in pending intra-EU arbitrations. Instead, it focused exclusively on disapplying the ECT in future intra-EU disputes in a way compliant with the VCLT, either through the adoption of a separate agreement or the modernised ECT, which incorporates an intra-EU disconnection clause.

The Adoption of the Modernised ECT

The most significant development of 2024 was the [adoption](#) of the modernised ECT by the Energy Charter Conference in December 2024, which will be provisionally applied as of September 2025. The modernised ECT is a more environmentally friendly treaty compared to its predecessor. It broadens protections to include technologies pivotal in the shift towards sustainable energy and acknowledges the right of its contracting parties to regulate matters related to the energy transition and climate change. Additionally, the modernised text reaffirms the commitments of the contracting parties under the [United Nations Framework Convention on Climate Change](#) and the [Paris Agreement](#).

[Johannes Tropper](#) explored the procedure for amending the ECT, the developments leading to the adoption of the modernised ECT, its entry into force, and its provisional application. Tropper explained that provisional application means that all provisions of the modernised ECT are temporarily treated as in force among the contracting parties provisionally applying the modernised treaty. According to the author, it remains uncertain whether tribunals will uphold the exclusion of protection for certain investors and investments under provisional application, although the prospective removal of consent for certain investment disputes is generally not problematic. In contrast, the author noted that pending proceedings are usually not affected.

[Nikos Lavranos](#) explained why the EU failed to adhere to its obligations under Article 21 of the [Treaty on European Union](#) ("TEU") when it decided not to sign the modernised ECT. Lavranos explained that the modernised ECT aligns with the objectives of Article 21(2)(f) TEU, which requires the EU to promote measures to improve environmental quality and sustainable resource management through its international action. Accordingly, he explained that Article 21(2)(f) TEU imposed a duty on the EU to sign the modernised ECT. Lavranos added that the EU's sudden reversal of its previously stated intention to sign the modernised text also breached Article 21(2)(b) TEU by undermining the rule of law and relevant principles of international law, given that the EU acted in bad faith towards the other ECT contracting parties by first creating legitimate expectations that it would have signed the modernised ECT and later refusing its signature.

Conclusion

In 2024, the ECT gained renewed momentum, marked by significant developments, most notably the adoption of a modernised text following the [agreement in principle](#) reached in 2022 (e.g., see

also the [interview](#) of Atsuko Hirose, Acting Secretary-General of the Energy Charter Secretariat). However, the practical impact of the modernised ECT remains uncertain for various reasons, including the withdrawal of several contracting parties, which has reduced the treaty's [membership](#).

Moreover, despite its innovations, the modernised text still presents certain limitations. For example, dispute resolution procedures between contracting parties do not apply to disputes concerning sustainable development provisions, potentially hindering efforts to promote sustainability through the ECT. Additionally, investor-state dispute settlement ("ISDS") provisions will not apply among contracting parties that are members of the same regional economic integration organisation. This may significantly narrow the scope of ISDS and discourage the accession of new countries.

The different perspectives presented in the contributions to the KAB offer insights into the complex interplay of international law, EU law, investment protection, climate policy, and sustainability. As the modernised ECT moves towards provisional application, it remains to be seen how it will impact the energy sector, arbitration practice, and global efforts to balance investment protection with the imperative of addressing climate change.

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The graphic features a central image of a gavel resting on a glowing digital circuit board with blue and red light trails. The text is overlaid on a dark background with a light blue horizontal line at the top.

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