



Declassified¹

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Committee on Social Affairs, Health and Sustainable Development

Network of Contact Parliamentarians for a healthy environment

Minutes of public hearings

Held in Paris on 2 December 2022

(Concerns point 3 of the agenda)

1. Climate crisis and Energy Charter Treaty (ECT)

In his opening remarks, **the Chair** reminded members that the PACE had called on member States to join the Energy Charter Treaty three times (Resolutions 1131(1997), 1434(2005) and 1531(2007)). At the time, there had been no questions about its usefulness. However, it was now at odds with the Paris Agreement and seven countries had announced their intention to leave the treaty (Belgium, France, Germany, the Netherlands, Spain, and Poland). Italy had been the first country to withdraw from the treaty, 10 years ago. The European Commission's Directorate-General for Energy (DG ENER) had been pushing for reform of the treaty.

In an opinion prepared by Mr Geraint Davies (United Kingdom), the PACE Social Affairs Committee had taken a stance on investor-state dispute settlement mechanisms in connection with the report by Mr Peter Omzigt (Netherlands) on "Human rights compatibility of investor-State arbitration in international investment protection agreements". In the relevant opinion, the committee had regretted the fact that these alternative dispute resolution methods (investor-state dispute settlement (ISDS) and the investment court system (ICS) initiated by the EU) involved excessive protection for investors.

The treaty included a sunset clause, which granted investors protection for 20 years following the withdrawal of a member state. That had an objective impact on the autonomy of states. The meeting should help to clarify the issue of whether the treaty should be modernised, or states should withdraw from it on a co-ordinated basis.

The exchange of views began with a remote statement by **Mr Guy Lentz**, Secretary General of the Energy Charter Treaty organisation, who pointed out that the purpose of the treaty was to ensure reliable energy supplies. In this connection, the treaty was still relevant: all EU members had acceded to it and it was part of the *Acquis Communautaire*. However, it was not currently in line with the Paris Agreement or the New Green Deal.

With a view to modernising the treaty, the States Parties and energy producers had held 18 four-day rounds of negotiations. With the modernised version, new investments in fossil fuels could be stopped from 15 August 2023 and sunset protection was reduced to only 10 years. Hydrogen and renewables were now covered by the treaty. In COREPER (decision-making body of Council of EU permanent representatives), however, Germany, France, the Netherlands, and Spain had blocked the modernisation of the treaty. There was no longer a qualified majority in favour. The European Commission had accordingly removed the item from the agenda. As a result, it had not been possible to discuss modernisation at the plenary meeting of the treaty organisation. Slovenia had also announced its withdrawal. He expressed his "great disappointment" regarding the failure of the reform, which, as things stood, maintained the protection of investments up to 2044.

Mr Moutquin asked Mr Lentz about the €52 billion which had been paid to investors because of the treaty. He asked what could be saved of this "doomed treaty". Lastly, he wished to know to what extent the Russian issue affected the treaty. He challenged the deregulation of the energy market and noted that Hungary was seeking to protect its citizens by regulating prices. Companies would be able to bring proceedings against the country.

The Chair noted that several countries had withdrawn. He asked what the possibilities were for modernising the existing treaty, as the current situation was unfavourable.

¹ The minutes were approved and declassified by the Network of Contact Parliamentarians for a healthy environment at its meeting on 25 January 2023.

Mr Grin stressed that stopping modernisation did not resolve the issues.

Mr Lentz said that real efforts had been negotiated in connection with modernisation of the treaty and that there was no certainty as to what amounts would have been awarded following arbitration rulings. The protection allowed by the 20-year clause had not been discussed separately. It would continue to apply if the countries left at this stage in the negotiations. For the time being, the European Commission was still working on modernisation and many countries were still in the treaty. Others were preparing to join (China and some African countries). Countries which withdrew might be required to review hundreds of bilateral agreements and renegotiating them would be even more difficult.

Ms Marie-Pierre Vedrenne, Member of the European Parliament (Renew Europe, France), spoke next (by video link). She had supported the co-ordinated withdrawal of EU countries from the treaty since 2019 and referred to the joint resolution recently adopted by the European Parliament (by over 300 of her colleagues) on the initiative of four political groups. Even when modernised, the treaty was still incompatible with the Paris Agreement. The arbitration system restricted member states' ability to legislate themselves. 70% of EU member states were in favour of co-ordinated withdrawal.

Mr Moutquin protested that Europeans were not investors' insurers. Moreover, 9 million people died every year because of fossil fuels. He asked what follow-up there would be to the European Parliament resolution.

Ms Tanguy asked which countries were still resisting co-ordinated withdrawal, which was being advocated by President Emmanuel Macron.

Mr Grin wondered how the right balance could be struck.

Mr Tahal said that his country, Kosovo, was both the poorest and the youngest in Europe. It was severely impacted by energy issues.

The Chair wondered what the date for co-ordinated withdrawal would be. The 20-year clause demanded a well thought-out response.

Ms Vedrenne called for a meeting in camera with the European Commission, which had gone out on its own in promoting modernisation. The countries which were being problematic were those led by the EPP group, in spite of a few differences regarding modernisation, and the Nordic countries.

Ms Catherine Banet, Professor, Scandinavian Institute of Maritime Law at the University of Oslo (Norway), provided a legal perspective and considered the advantages and disadvantages of the treaty. It was the only multilateral international energy treaty in the world. It had been very useful in a specific historic context because of the investor-state dispute settlement (ISDS) mechanism. It was a hybrid agreement that covered various issues linked to different levels of competence of the EU and member states. The two issues to be resolved were expedited withdrawal and the differences between EU members. As things stood, modernisation had been deferred to 2023 and the 20-year clause still applied. Modernisation required a unanimous decision. There was no unanimity about overriding the 20-year clause because the need to fund energy infrastructure was still very relevant.

[Ms Banet's presentation is available on the extranet]

Mr Moutquin asked whether it would be possible to negotiate a new treaty.

Mr Fridez highlighted the climate emergency against the background of the war raging in Europe. He asked what could be done to stop people making bad decisions in these terrible circumstances and how the tables could be turned. He also asked whether arbitration courts took account of the climate emergency.

The Chair asked how investments could be forced to become "green".

Mr Tahal stressed the need to keep focusing on the reality of the climate crisis. He wondered about the issue of the use of lignite.

Ms Banet explained that the requirements for withdrawal were set out in the treaty. For the time being, there was no plan B and resuming the negotiations would be difficult, not to mention the procedure for ratifying potential changes to the treaty. Talking about a war economy and the climate emergency did speed up decision-making. The use of lignite depended on national legislation. Arbitration courts did not take account of the climate emergency because they had no incentive to do so.

The Chair thanked the three experts. He noted that the right to a healthy environment was the way forward to generate the necessary momentum to break the deadlock. While a co-ordinated withdrawal was not the right

answer, the status quo was even less so. The network would need to continue addressing this fascinating issue.

ATTENDANCE LIST / LISTE DE PRESENCE

(The names of members who took part in the meeting are marked in bold /
Les noms des membres ayant pris part à la réunion sont en caractères gras)

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Mr Armen GEVORGYAN EC/DA

Austria / *Autriche*Mr Stefan SCHENNACH SOC
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Cyprus / *Chypre*Czech Republic / *République tchèque*Denmark / *Danemark*Estonia / *Estonie*

Mr Urmas REITELMANN EC/DA

Finland / *Finlande***Ms Minna REIJONEN** EC/DA

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Ms Liliana TANGUY ALDEGeorgia / *Géorgie*Germany / *Allemagne*

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Kyrgyzstan / *Kirghizstan*

Morocco / *Maroc* **Mr Allal AMRAOUI**

Palestine

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Mr Tiny KOX UEL

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| Migration / Migrations | M. Pierre-Alain FRIDEZ | SOC |
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Mr / *M.* Krzysztof Zyman, Executive Secretary of the EUR-OPA Major Hazards Partial Agreement / *Secrétaire exécutif de l'Accord partiel sur les risques majeurs (EUR-OPA)*

Mr / *M.* Eoghan Kelly, Secretariat of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) / *Secrétariat de la Convention relative à la conservation de la vie sauvage et du milieu naturel de l'Europe (Convention de Berne)*

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