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“Energy Charter Treaty: If we were to leave, when should we do it?”
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In my view, the question we should be asking ourselves is: if we were to leave, when should we do it?

We have three options ahead of us: withdrawing now, modernizing and staying in the treaty, or withdrawing after the modernization of treaty.

If we withdraw from the ECT now, taking into account that the EU is the leading force behind the modernization process, the ECT will not be modernized.

This implies that EU investments would be subject to old ISDS rules for 20 years.

Member States' existing investments in fossil fuels will remain under the ECT's protection system for 20 years under a non-transparent ECT investment protection system that doesn't require the disclosure of third-party funding, allows frivolous claims, and keeps a broad definition of the Fair and Equitable Treatment clause, whose broad principles have been the main gateway of disputes brought under the ECT.

Even if we have an inter se agreement among Member States, arbitrators could ignore the inter se and still continue to illegally hear intra-EU cases.

What would be the benefits of a modernized ECT?

It explicitly forbids intra-EU disputes. This is the safest legal way to ensure that arbitrators cannot continue to allow intra-EU disputes.

It explicitly protects our right to regulate and provides for the space to adopt ambitious climate policies.

The modernized ECT is aligned with the Paris Agreement. Article 19 of the revised ECT directly references to the rights and obligations of each Contracting Party under the Paris Agreement.

It is the first ever investment agreement to end the protection of fossil fuels.

If the ECT Conference approves the modernization on 22 November, then by 15 August 2023, all new investments in fossil fuels will no longer be protected under the ECT.

For existing investments in fossil fuels, the 10-year phase out would start as soon as the EU provisionally applies the modernized treaty. This means the EU could stop protecting all fossil fuel investments as soon as 2032.

The modernized treaty would also incentivize European renewable energy companies to invest in other Contracting Parties' territories.

If we leave under a modernized ECT, new and existing fossil fuel investment will not be protected during the 20-year sunset clause. Intra-EU cases still be forbidden. And green investments would remain protected.

We should take all the necessary steps to modernize the ECT.

The best way is modernizing and coming back to the question of leaving when the modernized treaty is in place.