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Protecting Energy Investments in Europe: UK Announces Withdrawal From the Energy Charter Treaty

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On 22 February, the UK announced its intention to withdraw from the Energy Charter Treaty. According to Energy Security and Net Zero Minister Graham Stuart, the decision will support the UK's transition to net zero and strengthen its energy security. Parties investing in energy projects in foreign jurisdictions should continue to consider what other forms of investment protection are available and structure their investments accordingly.

What Is the Energy Charter Treaty?

The Energy Charter Treaty (ECT), which entered into force in 1998, was designed to promote energy security and cooperation among its signatories. With provisions for investment protection, trade facilitation and dispute resolution, the treaty aimed to create a stable and predictable environment for energy investments. Whilst "energy investments" are widely defined, the historic focus was to provide protection for investments in fossil fuels.

Why Is the UK Withdrawing?

In recent years, the ECT has been subject to increasing criticism that it does not adequately support the ongoing transition to cleaner energy sources, and proposals to modernise the ECT have been subject to years of negotiations.

An updated ECT was proposed in 2022, which aimed to preserve existing protections while containing a "flexibility mechanism" providing ECT contracting parties the option to exclude fossil fuel investments within their territories from protection. The proposed amendments also sought to align with energy transition objectives, notably extending safeguards to include renewable

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Environmental, Social & Governance (ESG) technologies such as carbon capture, utilisation and storage (CCUS) and hydrogen. However, these reform efforts were ultimately unsuccessful, with the revised text being rejected by nine EU member states, including France, Germany, Spain and the Netherlands – all of whom have subsequently decided to withdraw.

With the European Parliament elections in 2024, the UK's view is that modernisation could now be delayed indefinitely. Separately, the European Commission and Parliament have now called for a co-ordinated exit from the ECT by the EU itself and all EU member states, although this is not currently unanimously supported.

What Is the Effect of the UK's Decision to Withdraw?

The UK's announcement does not in itself have any legal effect, and the formal withdrawal of its membership is subject to one year's written notice. However, under the ECT's 'sunset clause', investors with covered investments in the UK made prior to expiry of the notice period will continue to benefit from investment protection and the right to seek investment arbitration against the UK for a period of 20 years following the withdrawal. Likewise, UK investors with existing covered investments in other ECT contracting states will continue to enjoy treaty protection for the 20-year sunset period.

Once the withdrawal takes effect, new investments will not be protected under the ECT. However, the ECT is just one of many bilateral and multilateral international investment treaties which include similar investment protection mechanisms. History has shown that these treaties can be a vital tool when investing in energy projects in foreign jurisdictions, with successful claims leading to significant damages awards. It is, therefore, important to consider the availability of investor protections beyond the ECT and to structure the investment in a way that allows you to take full advantage of applicable treaties and domestic investment laws.