

Neutralising the ECT Sunset Clause *Inter Se*

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Following a wave of announcements from major EU Member States withdrawing or considering withdrawing from the Energy Charter Treaty (ECT), the European Commission decided to recommend a coordinated withdrawal of the EU and its Member States from the ECT. The European Commission also backs the adoption of a 'subsequent agreement on the interpretation of the ECT' between the EU and its Member States that would 'clarify' that the ECT and its sunset clause do not apply intra-EU.

The sunset clause contained in Article 47(3) of the ECT has been described as a major hurdle in States' attempt to exit the ECT. However, under an international treaty law analysis, strong arguments confirm the availability of an agreement between a subset of ECT Contracting Parties that would exclude the application of the ECT and its sunset clause in their relations *inter se*—including the envisaged EU agreement—as a suitable and effective alternative to modernisation of the ECT. Not only does this appear as the most desirable outcome in view of the continuing protection of fossil fuels under the modernised ECT, but such an agreement would also be firmly grounded in public international law.

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