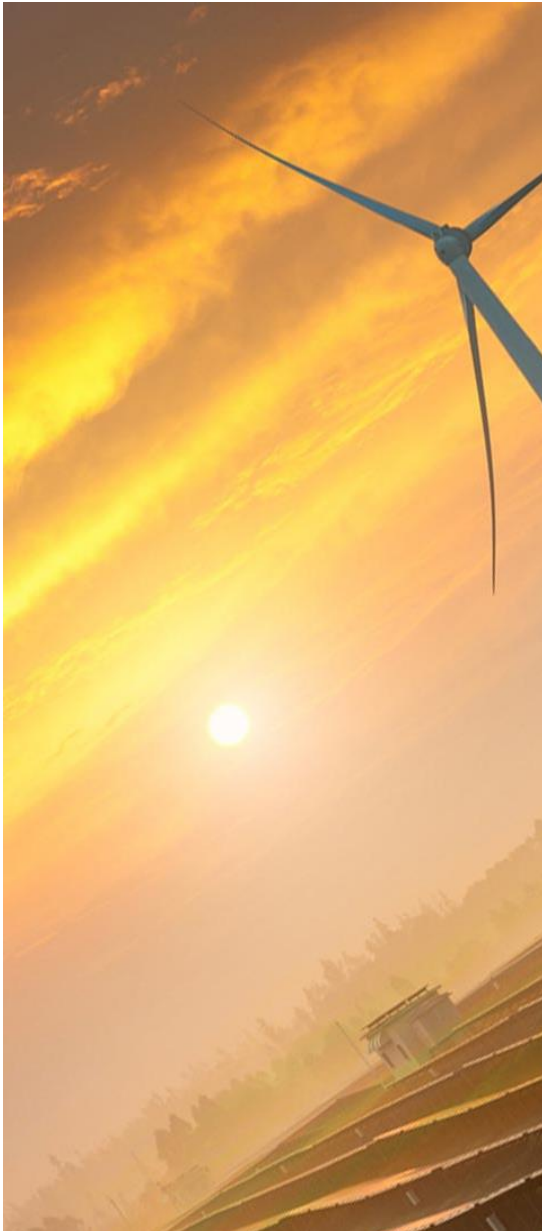

Portugal formalizes its withdrawal from Energy Charter Treaty

Portugal has formally withdrawn from the Energy Charter Treaty, having submitted a written notification to its depositary (the Government of the Republic of Portugal).

Portugal - Legal Update

April 16, 2024



Key aspects

- On February 1, 2024, the Government of the Republic of Portugal, in its capacity as the Energy Charter Treaty (“ECT”) depositary, received the withdrawal notification from the Republic of Portugal.
- Portugal’s withdrawal from the ECT will take effect on February 2, 2025.
- However, investments made by foreign investors in national territory and those made by Portuguese companies in other ECT contracting states will continue to be protected by the ECT until February 2, 2045.



Portugal's withdrawal from the ECT

Portugal's withdrawal from the ECT completes the withdrawal process initiated in 2023. The country's withdrawal is part of a broader trend of several European Union ("EU") Member States withdrawing from the ECT.

The ECT depository—the Government of the Republic of Portugal—confirmed the receipt of the withdrawal notification on February 1, 2024, marking the last step in the withdrawal process.¹

The ECT is a multilateral treaty² that has been in force since April 16, 1998. Its purpose is to promote long-term international cooperation in the energy sector by granting protection for investments made in the territories of contracting states. Among other mechanisms, the ECT allows for the arbitral resolution of disputes between an investor and a contracting state relating to energy sector investments. It has given rise to at least 150 investment arbitration cases since it entered into force.

In 2018, the judgment of the Court of Justice of the European Union in the *Slovak Republic v. Achmea* case, concerning intra-EU investment arbitration (i.e., between EU investors and EU Member States), triggered a process of attempting to modernize the ECT, led by the European Commission.

The main reasons cited for this process included the outdated and non-compliant provisions of the ECT with EU policies and legislation, as well as with the climate objectives set out in the Paris Agreement.

After the frustration of several rounds of negotiations and attempts to approve a modernization package, the European Commission concluded that remaining in the ECT was not viable. This prompted it to propose a joint and coordinated withdrawal of the EU from the ECT.

To date, France, Germany, Poland, Luxembourg, and Slovenia have notified the ECT depository of their withdrawal from the ECT, with the withdrawal taking effect for the first three countries from June 17, 2024, and from October 14, 2024, for the last two, respectively. Spain, Denmark, the Netherlands, and Ireland have also expressed their intention to unilaterally withdraw from the ECT.

In Portugal, since 2019, several organizations have advocated for the Portuguese Government to withdraw the country from the ECT, arguing that, by protecting investments in energy generated through fossil fuels, the ECT hinders the energy transition and conflicts with the need to adopt a regulatory framework against climate change.

Considering these arguments, on September 7, 2023, the Council of Ministers approved the decision to withdraw from the ECT, which was later given a favorable opinion by the Parliament's Committee on Foreign Affairs and Portuguese Communities. The ratification of this decision was made through Parliamentary Resolution 4/24, and in accordance with article 47.2 of the ECT, it will take effect one year

¹ Available at: https://www.energycharter.org/fileadmin/DocumentsMedia/Withdrawal_notifications/2024.02.01 - Withdrawal_notification_Portugal.pdf

² Although outdated, a list of ECT contracting states can be consulted at: <https://www.energycharter.org/who-we-are/members-observers/>



from the date the depositary received the notification (i.e., on February 2, 2025).

Therefore, Portugal also relinquishes its role as depositary, and it is for the ECT contracting states to appoint a new one.

Despite the withdrawal, under the sunset clause provided for in article 47.3 of the ECT, even after a state's withdrawal, the ECT will continue to apply to investments made before the withdrawal took effect for a period of 20 years from the withdrawal date.

Consequently, investments made in Portugal and by Portuguese investors in other contracting states will continue to be protected by the ECT until February 2, 2045.

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