
Spain withdraws from the Energy Charter Treaty

The Treaty will continue to protect existing investments in the energy sector as of the date the withdrawal takes effect until April 2045.

Spain- Legal flash

May 14, 2024



Key aspects:

- On April 16, 2024, the Government of the Republic of Portugal, in its capacity as the depositary of the ECT, received the notice of withdrawal by Spain from the treaty;
- Spain's withdrawal from the ECT will take effect on April 17, 2025;
- Investments made by foreign investors in the territory of Spain or by Spanish investors in other ECT Contracting States will continue to be protected by the ECT until April 17, 2045.



On May 14, 2024,¹ the Spanish Official State Gazette (“BOE”) published the withdrawal by the Kingdom of Spain of the Energy Charter Treaty (“ECT”) as well as the Energy Charter Protocol on energy efficiency and related environmental aspects (“Protocol”), both of which were done in Lisbon on December 17, 1994.² The withdrawal was made through a Note Verbale on April 16, 2024, which was sent to the Ministry of Foreign Affairs of the Portuguese Republic (“MFAPR”) in its capacity as depositary of the ECT. Portugal, which has also recently withdrew from the very same ECT, will likewise cease to act in that capacity.³

The withdrawal was previously approved by the Spanish Parliament after a debate fundamentally focused on whether the ECT is compatible or not with the Paris Agreement, given the ECT’s protection of investments in fossil fuels that cause greenhouse gas emissions.⁴ However, this debate lacked a serious and in-depth analysis of international law on the matter. The initiative of the Government of Spain to withdraw from the ECT has been framed within the broader discussion at the level of the European Union, sponsored by the European Commission, about the relationship between the two treaties.⁵ This recently led to the European Parliament voting⁶ in favor of a coordinated withdrawal from the ECT by all Member States.⁷

The ECT and the Protocol entered into force generally and for Spain on April 16, 1998. The ECT is well-known in Spain because its substantive and procedural provisions were effectively invoked by numerous foreign companies for the protection of their investments as a result of the successive reforms applied to the regulatory framework of renewable energies between 2010 and 2014. In this context, more than 50 investment protection arbitrations were initiated against the Kingdom of Spain in various forums (ICSID, SCC, and *ad hoc* arbitrations under the UNCITRAL Arbitration Rules), which have led to the condemnation of Spain to pay substantial compensation for damages.⁸

Regarding its legal effects, according to Article 47(2) of the ECT and Article 20(3) of the Protocol, the withdrawal will take effect on April 17, 2025, that is, one year after the date of receipt of the Note Verbale by the MFAPR, as recognized in the publication in the BOE. However, the same

¹ See BOE no. 117, May 14, 2024, p. 54515, available at https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-9618.

² BOE no. 65, March 17, 1998; erratum, BOE no. 140, June 12, 1998.

³ See the legal flash prepared by Cuatrecasas, “Portugal formalizes its withdrawal from Energy Charter Treaty”, available at <https://www.cuatrecasas.com/resources/lf-en-662696b777f9c592408022.pdf?v1.74.0.20240418> (April 16, 2024).

⁴ See BOCG, Congress of Deputies, XV Term, Series C, No. 1-2, February 22, 2024, available at https://www.congreso.es/public_oficiales/L15/CONG/BOCG/C/BOCG-15-C-1-2.PDF (in Spanish only).

⁵ See Díez-Hochleitner, J. (2023), “España anuncia su decisión de denunciar el Tratado de la Carta de la energía”, *Revista Española de Derecho Internacional*, vol. 75(1), pp. 225-235.

⁶ See “MEPs consent to the EU withdrawing from the Energy Charter Treaty”, available at <https://www.europarl.europa.eu/news/en/press-room/20240419IPR20549/meps-consent-to-the-eu-withdrawing-from-the-energy-charter-treaty> (April 24, 2024).

⁷ Some Member States already withdrew from the ECT some time ago and at their own initiative: Italy, France, Germany, Poland, Luxembourg, Slovenia, and Portugal. See “Written notification of withdrawal from the Energy Charter Treaty” available at the website of the Energy Charter Secretariat, https://www.energycharter.org/media/news/article/written-notification-of-withdrawal-from-the-energy-charter-treaty-2/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=9d3c978d607d633a4be5220227bd6bc5 (March 7, 2024).

⁸ See the parliamentary response by the Government of Spain of April 12, 2024, to the written question at the Congress no. 184/5289 of March 5, 2024 made by eight MPs of the Popular Party group, available at https://www.congreso.es/entradap/l15p/e2/e_0021356_n_000.pdf (in Spanish only).



publication omits the relevant fact that, according to Article 47(3) of the ECT, the provisions of the ECT will continue to apply to investments made by investors from other ECT Contracting States in Spain and to investments made by Spanish investors in other ECT Contracting States despite the withdrawal. This ‘sunset clause’⁹ of the ECT operates with the interplay of two relevant dates:

- On one hand, the cutoff date for making investments eligible for protection under the ECT is April 17, 2025, i.e., the date the withdrawal will take effect; and,
- On the other hand, the end date for the protection of investments by Spain or for Spanish investors is April 17, 2045, that is, 20 years after the withdrawal takes effect.

In other words, the withdrawal from the TCE by Spain shall only affect investments made from April 17, 2025 onwards, but not the current ones or those made up until that date. It also does not affect established situations.

For additional information, please contact our [*Knowledge and Innovation Group*](#) lawyers or your regular contact person at Cuatrecasas.

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⁹ The Energy Charter Secretariat has insisted on the importance of this provision, even analyzing its non-derogability under general international law; see <https://www.energycharter.org/media/news/article/sunset-clause-article-47-of-the-ect-in-relation-to-article-62-of-the-vienna-convention-on-the-law/> (November 3, 2022).