

Comment: ECT fossil fuel coverage faces test of EU energy vs climate choices

24/01/2022 by [Nikos Lavranos](#)

The outcome of the latest round of negotiations towards the modernisation of the Energy Charter Treaty reveals that there will be sufficient flexibility to allow natural gas to remain in place for the coming years as an energy source in Europe.

This is in line with the recent European Commission decision to label nuclear energy and natural gas as “green” energy sources within the context of the current EU’s determination of a ‘taxonomy for sustainable activities’ which aims at boosting investments into environmentally-friendly activities.

The tenth round of Energy Charter Treaty modernisation negotiations on 18-21 January 2022, made progress in a range of areas touching on investment protection standards in the energy sector.

Two dozens of specific topics **are on the negotiation table**. Since the negotiations take place with very little transparency, the only information that is available is a short summary published by the ECT secretariat.

According to the **latest summary**, good progress on revision treaty clauses dedicated to the “definition of Investment”, the “definition of indirect expropriation”, “denial of benefits” and the “MFN clause” has been made. Negotiators also touched on the issue of changing existing treaty language to include a “right to regulate” as well as updated general and security exceptions.

Fossil fuels and the Energy Charter Treaty

But perhaps more importantly, the readout states that there was good progress on the “Definition of Economic Activity in the Energy Sector”.

This was achieved by “narrowing down the options (...) to implement the flexibility considered necessary by individual Contracting Parties, including with respect to the scope of investment protection for fossil fuels in their territories, taking into account their individual energy security and climate goals.”

This part of the negotiation is of particular interest as it concerns the question of how to deal with fossil fuel energy production in light of the climate crisis.

Last year the European Commission submitted a proposal to the ECT in which it proposed to carve out fossil fuels from the investment protection provisions of the treaty. This would mean that fossil fuel investors would no longer be able to bring investor-state arbitration cases against governments engaging in activities that would amount to discriminatory treatment.

Whereas under the EU proposal most fossil fuels would lose their protection the moment the revised treaty comes into force, so-called “low carbon” natural gas emitting less than 380 grammes of CO₂ per kWh would remain covered by the treaty until the end of 2040, i.e., for almost the next 20 years.

In other words, the production of natural gas for energy production would remain unaffected under the ECT for the coming years and would be phased out very slowly.

This is also reflected in the opaque language in the summary of the ECT secretariat, which refers to taking into the “necessary flexibility” and the “individual energy and climate needs of the contracting parties”.

However, this raises the question how the ambitious climate change targets of the EU can be achieved while natural gas remains firmly in place within the ECT.

This apparent conflict was further amplified at the beginning of this year when the European Commission labelled natural gas and nuclear power as “green” energy sources which must be considered as a means to facilitate the transition towards a predominantly renewable-based future.

While nuclear energy production may not emit CO₂ into the atmosphere, that is clearly the case for natural gas, so again the question arises how can this be reconciled with the EU’s ambitions regarding the Paris Agreement?

As has been widely reported, the compromise to label both nuclear energy and natural gas as “green” energy sources is based on a compromise between the energy needs of France and of Germany.

France is heavily dependent on nuclear power, while Germany started to phase out its nuclear power plants after former Chancellor Merkel decided to do so in the aftermath of the

Fukushima disaster in Japan. Indeed, recently, Germany **settled an ECT dispute** with Swedish energy company Vattenfall for EUR 1.4 billion for the premature closure of several nuclear power plants.

So, while Germany is saying goodbye to nuclear power – also because the problem of safe, long-term storage of nuclear power waste remains unresolved – it needs to quickly switch from coal-fired to less polluting gas-fired power production. This explains why natural gas power production has been labelled as ‘green’ although it continues to contribute to the worsening of the climate change crisis. Indeed, the Green party who is a coalition partner in the German government is not happy at all with this greenwashing.

Soaring energy prices and dependence on Russian gas

Meanwhile, currently soaring energy prices partly caused by the current tensions with Russia highlight additional macro-economic and geopolitical reasons which may delay the shift towards renewable energy sources.

European governments are frantically looking for ways to cushion the impact of soaring energy prices for private consumers. Asking consumers now to pay even more for the energy transition would be political suicide.

At the same time, Europe’s continued dependence on Russian gas and the discussion surrounding the NordStream2 gas pipeline and the rising political tensions with Russia regarding Ukraine, Belarus and Kazakhstan, might it even more urgent to get rid of natural gas **as quickly as possible**.

Instead, it seems that both – natural gas and nuclear power – are here to stay for the coming years, irrespective of the climate crisis.

Negotiators aim to finalise negotiations ahead of the Energy Charter Conference in June 2022. In a few months we will know to what extent the ECT will have been been “greenwashed”.