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ETUC position on the Energy Charter Treaty

Brussels, 28 October

- **To the Members of the European Parliament Committee on the Environment, Public Health and Food Safety**

Dear Sir/Madam,

My name is Ludovic Voet, I am Confederal Secretary in charge of sustainable development, energy and climate change at the European Trade Union Confederation (ETUC), the umbrella organisation that represents European trade unions and their 40 million affiliated workers.

I would like to hereby share with you ETUC's position on the Energy Charter Treaty (ECT). The ECT is a relevant issue to the trade union movement as it touches upon topics such as energy supply, energy security and energy affordability. These are key elements for ensuring a stable economic environment, which in turn contributes to well-functioning labour markets. The ECT also touches upon democratic choices of States as it contains provisions possibly limiting their right to regulate. For ETUC an international legal framework to promote long term cooperation in the field of energy is of strategic importance for the EU energy security of supply.

However, the ECT is not fit for this purpose and is problematic for several reasons:

- **First of all, the ECT is currently being used mainly to protect investments in fossil fuels, which hampers the necessary energy transition towards climate neutrality.** Over the last few years, several countries have been sued before an arbitration tribunal due to new climate policies they had introduced, resulting in massive financial compensations for private companies or in the lowering of the ambition of climate policies.

- **Second, the Treaty can be used by private companies to prevent States or public authorities to regulate and develop public policies necessary for a just transition.** For example, it can be used to challenge social legislations that aim at lowering the price of electricity for low-income households or creating public energy hubs.
- **Third, following these arbitrations, the States have to compensate private companies for their expected profits by paying massive amount of public money** that could instead be used to finance the green transition or to counter the negative socio-economic consequences of decarbonisation.
- **Fourth, the problematic nature of the arbitration procedure itself**, as the ECT relies on a parallel justice system that allows companies to directly sue a State or a party organisation – such as the EU – before an Investor-state dispute settlement (ISDS) arbitration tribunal. Such system considerably weakens the power of democratic institutions and tends to create an unbalanced two-speed justice system that favours private companies.
- **Finally, the governance process of the ECT causes issues in terms of transparency and openness to civil society.** In its current format, the ECT does not allow the participation of stakeholders other than private companies and industry associations. Trade Unions and other civil society are therefore de facto excluded from these discussions.

Because of these reasons, ETUC considers that the ECT, in its current version, is posing a **threat to the good functioning of democratic institutions and to social justice** by limiting the sovereignty of States to regulate, adopt public policies and develop public services in the interest of their citizens. The Trade Union movement considers that the Treaty is not compatible with the Paris Agreement and the European Green Deal's objectives and that it constitutes an **obstacle to a just transition of the workforce**.

In the absence of major breakthrough to significantly reform the ECT after the 8th negotiation round, ETUC calls the EU and its Member States to consider the termination of the ECT to avoid the detrimental effects of the 20 years sunset clause foreseen in the treaty. In case such termination is not possible as it requires a unanimous decision by all the contracting parties, ETUC calls on the EU Member states to give a strong mandate to the European Commission to negotiate a collective withdrawal from the ECT. In parallel, Member States should work to develop an inter se agreement – a legal mechanism between them – that would prohibit intra – EU ISDS disputes for the duration of the sunset clause.

Please find attached ETUC's detailed position on the topic.

I thank you in advance for the consideration you will give to our proposals and remain of course available to further exchange on this important topic with you at any time.

Yours sincerely,

Ludovic Voet
ETUC Confederal Secretary

EN-ETUC position on the Energy Charter Treaty.pdf

FR-Position de la CES sur le traité de la charte sur l'énergie_0.pdf