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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	13242/22 INIT
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the 33rd meeting of the Energy Charter Conference

Delegations will find attached a revised version of the Commission proposal, as prepared by the Presidency (REV2).

From 14290/22 deletions are marked in ~~strikethrough~~, new text is marked with **bold underline**.

New deletion in current document is marked ~~strikethrough grey shaded~~.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the 33rd meeting of the Energy Charter Conference

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 194(2) and **the first subparagraph of Article 207(4)**, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Energy Charter Treaty ('the Agreement') was concluded by the Union by Council and Commission Decision 98/181/EC, ECSC, Euratom of 23 September 1997 on the conclusion, by the European Communities, of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects (OJ L 69, 9.3.1998, pp. 1-116) and entered into force on 16 April 1998.
- (25) In the absence of any substantial update of the Agreement since the 1990s, the Agreement became increasingly outdated. It ~~is~~**was accordingly proposed** ~~appropriate~~ to amend the Agreement **with a view to bringing** it into alignment with the principles of the Paris Agreement, the requirements of sustainable development and the fight against climate change, as well as with modern standards of investment protection **and investor-to-State dispute settlement**. ~~The amendments also aim at confirming for greater certainty that the provisions of the Agreement on investor-to-State dispute settlement and State-to-State dispute settlement do not apply, and have never applied intra-EU, as this would be contrary to Union law.~~

- (32) Pursuant to Article 34 of the Agreement, the Energy Charter Conference adopts texts of amendments to the Agreement and approves modifications of, and technical changes to, the Annexes to the Agreement.
- (34) The Energy Charter Conference, during its 33rd meeting on 22 November 2022, is to (i) adopt the proposed amendments to the ~~Energy Charter Treaty~~ Agreement (CC 760), and to approve (ii) the proposed modifications and changes to the Annexes to the ~~Energy Charter Treaty~~ Agreement (CC 761), (iii) the proposed changes to Understandings, Declarations and Decisions (CC 762), and (iiiiv) the decision regarding the entry into force and provisional application of amendments to the ~~Energy Charter Treaty~~ Agreement and ~~changes/modifications~~ and changes to its Annexes (CC 763), thereby concluding the negotiations conducted with a view to modernising the Agreement.
- (54) It is appropriate to establish the position to be taken on the Union's behalf in the Energy Charter Conference as regards matters falling within Union competence, as the abovementioned acts will have legal effects ~~be binding on the Union~~.
- (6) The position to be adopted on behalf of the Union pursuant to this Decision is without prejudice to the subsequent decision of the Union on the provisional application and conclusion of the proposed amendments to the Agreement (CC 760) pursuant to Articles 218(5) and 218(6) of the TFEU.
- (7) The proposed acts will be adopted by the Conference if no Contracting Party objects. The Union's position should be not to raise objections, so as to allow for the adoption of the proposed acts by the Conference.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 33rd meeting of the Energy Charter Conference shall be **to participate in the vote and raise no objection** to the following:

- (a) ~~to support the adoption by the Conference of the proposed amendments to the Energy Charter Treaty~~ **Agreement** (CC 760);
- (b) ~~to the approval of~~ the proposed modifications and changes to the Annexes to the ~~Energy Charter Treaty~~ **Agreement** (CC 761);
- (c) ~~to the approval of~~ the proposed changes to Understandings, Declarations and Decisions (CC 762); and
- (d) ~~to the approval of~~ the decision regarding the entry into force and provisional application of amendments to the ~~Energy Charter Treaty~~ **Agreement** and ~~changes/modifications~~ **and changes** to its Annexes (CC 763).

Article 2

This Decision **shall enter into force on the day of its adoption** ~~is addressed to the European Commission.~~

Done at Brussels,

For the Council

The President
