Council of the European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	ST 7234/24
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Energy Charter Conference

Delegations will find in the Annex, the 2nd revision of the above-mentioned proposal.

New text is **bold underline** and deletions are ~~strikethrough~~.

Text from the first revision is **bold** and deletions are ~~*strikethrough italics*~~.

2024/0057 (NLE)

Proposal for a

COUNCIL DECISION

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

PUBLIC

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*~~ **Agreement** 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.

(2) In the absence of any substantial update of the Agreement since the 1990s, the Agreement became increasingly outdated.

(2a) In 2019, the Contracting Parties to the Agreement engaged in negotiations aimed at modernising the Agreement in order to bring 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.

(2b) **During an ad-hoc Conference on 24 June 2022, the Contracting Parties reached an agreement in principle on the modernised text, thus concluding the negotiations, without prejudice to the final assessment by the Contracting Parties. The negotiated outcome was meant to be adopted at the 33rd meeting of the Energy Charter Conference on 22 November 2022.**

(3) 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.

(4) The Energy Charter Conference is to adopt the proposed amendments to the Energy Charter Treaty and to approve (i) the proposed modifications and changes to the Annexes to the Energy Charter Treaty, (ii) the proposed changes to Understandings, Declarations and Decisions, and (iii) the decision regarding the entry into force and provisional application of amendments to the Energy Charter Treaty and changes/modifications to its Annexes. It is expected that the Conference will retable the proposed amendments for adoption in the course of 2024, either in a meeting or by a written procedure, as the case may be.

~~*(5)*~~ ***(moved below as (6a) and amended)*** ~~*It is appropriate to establish the position to be taken by the Member States who are Contracting Parties to the Energy Charter Treaty. This is without prejudice to the division of competences between the Union and the Member States.*~~

(6) In parallel **to the present proposal**, the European Commission has tabled **a** proposal~~s~~ for **a** Council Decision~~s~~ on the withdrawal of ~~the EU~~ ~~*and of*~~ Euratom from the Agreement that **is** ~~*are*~~ to be adopted ~~jointly~~ **at the same time** with this proposal.

(6a) ***(ex recital (5) moved and amended)*** It is appropriate **for the Union not to exercise its vote at the Energy Charter Conference voting on the proposed amendments to the Agreement and** to establish the position**s** to be taken by the Member States ~~*who*~~ **that** are Contracting Parties to the Energy Charter Treaty **for matters falling under the Union's competence**. This is without prejudice to the division of competences between the Union and the Member States **and any ~~to~~ future coordination ~~needed~~ after the withdrawal of the Union from the Energy Charter Treaty ~~takes effect~~**.

(7) As the areas covered by the ~~*Energy Charter Treaty*~~ **proposed amendments to the Agreement** fall largely under the exclusive Union competence, the Member States **should ~~be authorised by the Union~~ take a position not ~~to~~ preventing the adoption of the modernisation through the proposed amendments to the Agreement.** ~~*cannot remain Contracting Parties to the Energy Charter Treaty once the Union has withdrawn unless they are authorised to do so by the Union. Hence, once the withdrawal of the Union from the Energy Charter Treaty takes effect and absent an authorisation by the Union to remain Contracting Parties, the Member States will have to withdraw from the Energy Charter Treaty within a reasonable period of time.*~~

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 36(7) of the Agreement, the Union shall not exercise its right to vote in the Energy Charter Conference voting on the proposed amendments to the Agreement. ~~*The position to be taken by the*~~ **The** Member States that are Contracting Parties to the ~~Energy Charter Treaty~~ **Agreement and that are present ~~shall be authorised to exercise their vote~~** at the Energy Charter Conference **shall exercise their vote so as:** ~~*shall be the following:*~~ ~~**voting on the proposed amendments to the Agreement in order:**~~

(a) not to prevent the adoption by the Conference of the proposed amendments to the Energy Charter Treaty ~~**(CC 760)**~~;

(b) not to prevent the approval of the proposed modifications and changes to the Annexes to the Energy Charter Treaty ~~**(CC 761)**~~;

(c) not to prevent the approval of the proposed changes to Understandings, Declarations and Decisions ~~**(CC 762)**~~; and

(d) not to prevent the approval of ~~*the*~~ **a** decision regarding the entry into force and provisional application of amendments to the Energy Charter Treaty and changes/modifications to its Annexes.

Article 1a

Subject to the adoption of the amendments to the Agreement by the Energy Charter Conference, the President of the Council shall, on behalf of the Union, give a written notification, in accordance with the decision regarding the entry into force and provisional application of amendments of the Agreement and changes to its Annexes, that the Union is not able to accept the provisional application of the amendments to the Agreement and of the modifications and changes to its Annexes.

Article 2

This Decision **shall enter into force on the day of its adoption.** ~~*is addressed to the Member States that are Contracting Parties to the Energy Charter Treaty.*~~

Done at Brussels,

For the Council
The President

PUBLIC