



Council of the
European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	ST 7235/24
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of Euratom in the Energy Charter Conference

Delegations will find in the Annex, the 3rd revision of the above-mentioned proposal.

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

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

Proposal for a

COUNCIL DECISION

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 101 paragraph 2 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Energy Charter Treaty ('the Agreement') was concluded by European Atomic Energy Community ('the Euratom') 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.
- (2) In the absence of any substantial update of the Agreement since the 1990s, the Agreement became increasingly outdated.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 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 Euratom and the Member States.*~~
- (6) In parallel **to the present proposal**, the European Commission has tabled **a** proposals for a Council Decisions 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 Euratom not to exercise its vote at the Energy Charter Conference voting on the proposed amendments to the Agreement and to establish the positions to be taken by the Member States who that are Contracting Parties to the Energy Charter Treaty for matters falling under Euratom's competence. This is without prejudice to the division of competences between the Euratom and the Member States and any to future coordination needed after the withdrawal of Euratom from the Energy Charter Treaty takes effect**

(6b) The draft conference decisions on the modernization of the Agreement provide that some amendments to the Agreement as well as the modifications and changes to the Annexes of the Agreement will apply provisionally as of a date to be determined by its Contracting Parties, unless a Contracting Party opts out by making a declaration to that effect within a specific deadline. The Union therefore has to take a position on the provisional application of the modernised Agreement. Subject to the adoption of the modernised Agreement by the Energy Charter Conference, the Council, pursuant to Article 218(5) TFEU, may adopt a decision on provisional application, upon a Commission proposal. In the absence of such a Council decision two weeks prior to the deadline for notifying an opt-out from provisional application, the Commission should notify the depositary of the Agreement that the Union and Euratom opt out from provisional application. This is without prejudice to the duration of provisional application of the modernized Energy Charter Treaty by the Union and Euratom in case the Council adopts a decision to that effect.

(7) As the areas covered by the *Energy Charter Treaty* proposed amendments to the Agreement fall largely under the exclusive *Union and* Euratom competence, the Member States ~~should be authorised by Euratom~~ 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 and the Euratom have withdrawn unless they are authorised to do so by the Union and Euratom. Hence, once the withdrawal of the Union and the Euratom from the Energy Charter Treaty take effect and absent an authorisation by the Union and Euratom 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, Euratom shall not exercise its right to vote in the Energy Charter Conference voting on the proposed amendments to the Agreement. ~~The following position to be taken by~~ The Member States that are Contracting Parties to the ~~Energy Charter Treaty shall be authorised to exercise their vote~~ Agreement and that are present at the Energy Charter Conference shall exercise their vote so as: ~~voting on the proposed amendments to the Agreement, as regards matters falling under the Euratom Treaty, is hereby approved by the Council: 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

In the absence of a Council decision on the provisional application of the modernised Agreement two weeks prior to the deadline for notifying an opt out from provisional application, the Commission shall notify the depositary of the Agreement that the Union and Euratom opt out from provisional application.

Subject to the adoption of the amendments to the Agreement by the Energy Charter Conference, the President of the Council shall, on behalf of Euratom, 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 Euratom 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 Commission.*

Done at Brussels,

For the Council

The President
