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WORKING DOCUMENT

From:	European Commission
To:	Trade Policy Committee (Experts - Services and Investment)
Subject:	Decision of the EP and the Council on the adoption of the Agreement on the interpretation and application of the Energy Charter Treaty (ECT) - Non-paper by the Commission services concerning a possible statement by the Commission

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Non-paper by the Commission services concerning a possible statement by the Commission

Statement by the Commission accompanying the adoption of the Decision of the European Parliament and of the Council on the adoption by the Union/Euratom of the Agreement on the interpretation and application of the Energy Charter Treaty between the European Union, the European Atomic Energy Community and their Member States:

The Commission underlines that the Agreement on the interpretation and application of the Energy Charter Treaty between the European Union, the European Atomic Energy Community and their Member States (the Agreement) is an act of international law that expresses the common understanding of the parties that are both contracting parties to the Energy Charter Treaty on the one hand and bound by the Treaty on European Union (“TEU”), the Treaty on the Functioning of the European Union (“TFEU”) and the Treaty establishing the European Atomic Energy Community (“the EURATOM Treaty”) on the other, of what their intention was when they entered into the Energy Charter Treaty and therefore agreed to be bound by Article 26 of that Treaty. The Decision on the adoption of the Agreement expresses the consent of the Union to become a party to the Agreement.

The Commission acknowledges the sui generis nature of the Agreement, being an instrument of international law concluded between the Union/Euratom and Member States. No other subject of international law being a party to the Agreement, the Decision does not come within the scope of Article 218 TFEU and thus does not affect recourse to that provision – and to Article 207 TFEU, as appropriate – as the legal basis that sets out the procedure for the negotiation and conclusion of agreements between the Union and third countries or international organisations.

The Commission furthermore underlines that, while Article 194 TFEU is the legal basis for the internal Decision approving the signing of the international agreement by the European Union, the agreement itself is an international agreement.

The Commission recalls that the purpose of the Agreement is to preserve the autonomy of the Union legal order and to achieve the objectives of the energy policy of the Union. Its conclusion was rendered necessary by the continued disregard by investors established in Member States, arbitral tribunals and courts in third countries for the case law of the Court of Justice of the European Union and the clear position of the Union that Article 26 of the Energy Charter Treaty does not, and indeed never did, apply in intra-EU settings and that arbitration proceedings initiated pursuant to that provision by an investor from one Member State against another Member State, or the Union or Euratom, lack a legal basis.