



Council of the European Union
General Secretariat

Brussels, 28 April 2023

WK 5567/2023 INIT

LIMITE

**ENER
POLCOM
FDI**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	Next steps as regards the EU, Euratom and Member States' membership in the Energy Charter Treaty and its modernization - Non-paper from the Presidency

In view of the Energy Working Party on 4 May, delegations will find in the annex a Presidency non-paper on the next steps as regards the EU, Euratom and Member States' membership in the Energy Charter Treaty and its modernization.

WK 5567/2023 INIT

Non-paper from the Presidency

Next steps as regards the EU, Euratom and Member States' membership in the Energy Charter Treaty and its modernization

1. Purpose of the non-paper

This non-paper is intended to guide a discussion with Member States on the possible options available to the EU, Euratom and Member States as regards their respective membership in the Energy Charter Treaty (ECT) and the modernisation of the ECT in light of the current absence of an EU and a Euratom positions on the modernisation of the ECT and the subsequent discussions in the Energy Working Party on the basis of a non-paper from the European Commission.

2. Background

The negotiations on the modernisation of the ECT were concluded on 24 June 2022 after 15 rounds of negotiations. The modernised ECT was scheduled for adoption by the Energy Charter Conference on 22 November 2022.

Despite the efforts to build a compromise allowing the EU and Euratom to take a position at the Conference, the proposed Council decision for the EU and Euratom to endorse the modernised ECT did not get sufficient support in Coreper on 18 November 2022.

Consequently, in agreement with the Member States, the Commission requested the removal of the modernisation of the ECT from the agenda of the Energy Charter Conference. The practical consequence is that the modernisation was neither adopted nor rejected by the Energy Charter Conference. In the absence of an EU and Euratom endorsement of the modernisation of the ECT, the unmodernised ECT – which is not in line with the EU's policy on investment protection or the Green Deal – continues to apply.

Discussions were subsequently held in the Working Party on Energy, with the participation of delegates from the Trade Policy Committee (Experts Services and Investment), on 7 February 2023 and 14 March 2023, on the basis of a non-paper from the European Commission, with a view to identifying common ground on the way forward

The discussions showed that there is limited but clearly insufficient support for the option 1 in the Commission non-paper proposing a coordinated withdrawal by the EU and its Member States. This option was considered unacceptable by a number of Member States that are concerned this would trigger the sunset clause, thus conserving an unreformed treaty for another 20 years for existing investments and amid concerns expressed about the legal effectiveness of the proposal for an interpretation of the EU to end its application to intra-EU investments. The discussions showed that number of Member States wish to remain parties to a modernized ECT and that several Member States that have announced their withdrawal could still support the modernisation. While it was broadly held that Member States should be allowed to remain parties to a modernised ECT, several Member States considered also that this would not require prior authorisation pursuant to Article 2 (1) TFEU.

A proposal by the Chair of the ECT to have a decision on the modernisation package taken by way of a written procedure did not go through following strong objections raised by the EU in the Management Committee in April 2023. To this date, the EU has thus intervened twice to stop the adoption of the modernisation package in line with the absence of an EU position on the modernisation. This reinforces an already existing perception that the EU is blocking the modernisation that it has sought in the first place. This serves to further underline the importance and urgency of finding a common way forward.

3. Proposed way forward

Against this background, the Presidency proposes the following compromise package as a way forward.

- A Council decision on the withdrawal of the European Union and Euratom from the Energy Charter Treaty. This would provide those Member States that have argued strongly for the withdrawal of the EU as well as a majority of members of the European Parliament reassurances that there will be an early and swift withdrawal of the EU from the ECT.
- A parallel Council decision that would allow those Member States who wish to remain parties to the ECT to be able to do so in a modernized ECT by authorising them not to oppose an approval of the modernisation package. This would give reassurances to those Member States who support a modernised ECT and to those Member States that cannot agree to the conservation of an unreformed treaty for another 20 years that a withdrawal now would bring about for existing investments. Such a Council decision would also break the current deadlock in the ECT, allowing the Energy Charter Conference to proceed to a decision on the modernisation.

As a next step, the Commission would be invited to present a proposal for the council decisions that would enable such a package solution to go forward.