



Council of the
European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be taken on behalf of the
European Union in the Energy Charter Conference

COUNCIL DECISION (EU) 2024/...

of ...

**on the position to be taken on behalf of the European Union
in 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 means of Council and Commission Decision 98/181/EC, ECSC, Euratom¹ 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- (2) In the absence of any substantial update of the Agreement since the 1990s, the Agreement became increasingly outdated.
- (3) In 2019, the Contracting Parties to the Agreement (the ‘Contracting Parties’) engaged in negotiations aimed at modernising the Agreement in order to bring it into alignment with the principles of the Paris Agreement adopted on 12 December 2015 under the United Nations Framework Convention on Climate Change, the requirements of sustainable development and the fight against climate change, as well as with modern standards of investment protection.
- (4) During an ad-hoc Conference on 24 June 2022, the Contracting Parties reached an agreement in principle on the modernised text of the Agreement, 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.

¹ Council and Commission Decision 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, p. 1).

- (5) 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.
- (6) The Energy Charter Conference is to adopt the proposed amendments to the Agreement and to approve (i) the proposed modifications and technical changes to the Annexes to the Agreement, (ii) the proposed changes to decisions, declarations and understandings, and (iii) the decision regarding the entry into force and provisional application of amendments to the Agreement and modifications and technical changes to its Annexes. It is expected that the Conference will retable the proposed amendments for adoption in the course of 2024.
- (7) In parallel to the present proposal, the Commission has tabled a proposal for a Council Decision on the withdrawal of the Union from the Agreement that is to be adopted at the same time with this proposal.
- (8) 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 positions to be taken by the Member States that are Contracting Parties 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 future coordination after the withdrawal of the Union from the Agreement.

- (9) The draft conference decisions on the modernisation 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 the Contracting Parties, unless a Contracting Party opts out by making a declaration to that effect within a specific deadline. The Union therefore should 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) of the Treaty on the Functioning of the European Union, 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 the provisional application of the modernised Agreement by the Union and Euratom where the Council adopts a decision to that effect.
- (10) The areas covered by the proposed amendments to the Agreement fall largely under the exclusive Union competence. The Member States that are Contracting Parties and that are present at the Energy Charter Conference should take a position which does not prevent the adoption of the modernisation through the proposed amendments to the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

1. In accordance with Article 36(7) of the Energy Charter Treaty (the ‘Agreement’), the Union shall not exercise its right to vote in the Energy Charter Conference voting on the proposed amendments to the Agreement.
2. The Member States that are Contracting Parties to the Agreement and that are present at the Energy Charter Conference shall exercise their vote so as:
 - (a) not to prevent the adoption by the Conference of the proposed amendments to the Agreement;
 - (b) not to prevent the approval of the proposed modifications and technical changes to the Annexes to the Agreement;
 - (c) not to prevent the approval of the proposed changes to decisions, declarations and understandings; and
 - (d) not to prevent the approval of a decision regarding the entry into force and provisional application of amendments to the Agreement and modifications and technical changes to its Annexes.

Article 2

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.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the Council

The President
