

Brussels, 3 September 2024

35TH MEETING OF THE ENERGY CHARTER CONFERENCE
3 December 2024

**PROPOSED CHANGES TO UNDERSTANDINGS, DECLARATIONS AND
DECISIONS**

The Energy Charter Conference will be invited to approve the proposed changes to

- a) Understandings, Declarations and Decisions contained in the Final Act of the European Energy Charter Conference (as modified by the Protocol of Correction in 1996) and
- b) Understandings contained in the Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (ECT)

as attached hereto and communicated by the Secretariat to the Contracting Parties on 19 August 2022 with further inclusion of an additional Understanding with respect to Article 49, as supported by the Modernisation Group at its meeting on 26 August–2 September 2024 (MOD 55) and communicated by the Secretariat to the Contracting Parties on 3 September 2024.

The changes:

- a) to Understandings in sections I.1, I.3, I.19, I.21 of this decision,
- b) to Declarations in section II of this decision,
- c) to Decisions in sections III.2 to 4 of this decision, and
- d) in section IV.1 of this decision

shall enter into force on 3 December 2024.

Other changes in this decision shall enter into force in relation to each Contracting Party at the same time as the amendments to the ECT adopted on 3 December 2024 enter into force for that Contracting Party. In the meantime, they will apply provisionally in the same way as the amendments to the ECT adopted on 3 December 2024.

I. CHANGES TO UNDERSTANDINGS

1. In Understanding n. 1, with respect to the Treaty as a whole, subparagraph (b)(i), replace “third party” with “third-party”.
2. In Understanding n. 2, with respect to Article 1(5), subparagraph (b)(iii), replace “transportation” with “transport”; subparagraphs (b)(iv) and (v), replace “energy related” with “energy-related”; and at the end of subparagraph (b)(vii), add “as defined in Article 19(7)(c)”.
3. Delete Understanding n. 4, with respect to Article 1(8).
4. Delete Understanding n. 5, with respect to Article 1(12).
5. In Understanding n. 8, with respect to Article 7(4), replace “(4)” with “(7)”.
6. Renumber Understandings 6 to 9 as 4 to 7.
7. Delete Understanding n. 10, with respect to Article 10(4).
8. Delete Understanding n. 11, with respect to Articles 10(4) and 29(6).
9. Delete Understanding n. 12, with respect to Article 14(5).
10. Add a new Understanding n. 8, with respect to Article 17 bis:

“In the case of the European Union:

(a) “subsidy” includes “State aid” as defined in European Union law;

(b) the competent authorities entitled to order the actions mentioned in Article 17 bis are the European Commission or a court or tribunal of a Member State when applying European Union law on State aid.”
11. Renumber Understanding n. 13, with respect to Article 19(1)(i), as Understanding n. 9 and replace in the title “(1)” with “(5)”.
12. Renumber Understanding n. 14, with respect to Articles 22 and 23, as Understanding n. 10; and replace “Article 29” with “Article 32”.
13. In relation to the original ECT, renumber Understanding n. 15, with respect to Article 24, as Understanding n. 11; in the title, replace “Article 24” with “Articles 24 and 24 bis”; and replace the text with:

“Exceptions contained in the GATT and Related Instruments apply between particular Contracting Parties which are parties to the GATT, as recognised by Article 4. With

respect to trade in Energy Materials and Products governed by Article 32, that Article specifies the provisions relevant to the subjects covered by Articles 24 and 24 bis.”

14. In relation to the ECT as amended in 1998, renumber Understanding n. 15, with respect to Article 24, as Understanding n. 11; in the title, replace “24” with “24 and 24 bis”; and replace the text with:

“Exceptions contained in the GATT, GATS and Related Instruments apply between particular Contracting Parties which are parties to the WTO, as recognised by Article 4. With respect to trade in Energy Materials and Products governed by Article 32, that Article specifies the provisions relevant to the subjects covered by Articles 24 and 24 bis.”

15. Renumber Understanding n. 16, with respect to Article 26(2)(a), as Understanding n. 12.

16. Delete Understanding n. 17, with respect to Articles 26 and 27.

17. In relation to the original ECT, renumber Understanding n. 18, with respect to Article 29(2)(a), as Understanding n. 13; and rename it as “with respect to Article 32(2)(a)”.

18. Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the ECT, rename Understanding n. 1, with respect to Article 29(2)(a) and Annex W, as “with respect to Article 32(2)(a) and Annex W”;

Add at the beginning of the Understanding: “Where a provision of WTO law referred to in this paragraph provides for joint action by members of the WTO, it is intended that the Charter Conference take such action.”; and replace “signatory” with “Contracting Party”

This Understanding replaces Understanding n. 18 of the Final Act of the European Energy Charter Conference in relation to the ECT as amended in 1998, as Understanding n. 13.

19. Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the ECT, rename the title of Understanding n. 2, with respect to Article 29(7), as “with respect to Article 32(7)”; and replace “signatory” with “Contracting Party”. Add this Understanding as Understanding n. 14 of the Final Act of the European Energy Charter Conference in relation to the ECT as amended in 1998.

20. Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the ECT, rename the title to Understanding n. 3, with respect to Articles 29(6) and (7) and 34(3)(o), as “with respect to Articles 32(6) and (7) and 34(3)(o)”. Add this Understanding as Understanding n. 15 of the Final Act of the European Energy Charter Conference in relation to the ECT as amended in 1998.

21. Delete Understanding n. 19, with respect to Article 33.

22. In relation to the original ECT, renumber Understanding n. 20, with respect to Article 34, as Understanding n. 14; and replace the text with “The Charter Conference should adopt the annual budget before the beginning of the financial year.” Renumber Understanding n. 21 as Understanding n. 15.
23. In relation to the ECT as amended in 1998, renumber Understanding n. 20, with respect to Article 34, as Understanding n. 16; and replace the text with “The Charter Conference should adopt the annual budget before the beginning of the financial year.” Renumber Understanding n. 21 as Understanding n. 17.
24. In relation to the original ECT, add a new Understanding n. 16, with respect to Article 49:

“The “Secretariat” in Article 49 shall mean a “Secretariat” defined in Article 35. For the avoidance of doubt, all references to the “Depositary” in this Treaty shall mean the “Secretariat” defined in Article 35 in the capacity of the Depositary.”
25. In relation to the ECT as amended in 1998, add a new Understanding n. 18, with respect to Article 49:

“The “Secretariat” in Article 49 shall mean a “Secretariat” defined in Article 35. For the avoidance of doubt, all references to the “Depositary” in this Treaty shall mean the “Secretariat” defined in Article 35 in the capacity of the Depositary.”
26. Delete Understanding n. 22, with respect to Annex TFU(1).

II. CHANGES TO DECLARATIONS

1. Delete Declaration n. 1, with respect to Article 1(6).
2. Delete Declaration n. 2, with respect to Articles 5 and 10(11).
3. In Declaration n. 3, with respect to Article 7, replace “The European Communities and their Member States and Austria, Norway, Sweden and Finland” with “The European Union, the European Atomic Energy Community, their Member States and Norway”; renumber it as Declaration n. 1.
4. Delete Declaration n. 4, with respect to Article 10.
5. In Declaration n. 5, with respect to Article 25, renumber it as Declaration n. 2 and replace the text with:

“The European Union, the European Atomic Energy Community and their Member States recall that, in accordance with Article 54 of the Treaty on the Functioning of the European Union:

- (a) companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Union shall, for the right of establishment pursuant to Part Three, Title IV, Chapter 2 of the Treaty on the Functioning of the European Union, be treated in the same way as natural persons who are nationals of Member States; companies or firms which only have their registered office within the European Union must, for this purpose, have an effective and continuous link with the economy of one of the Member States;
- (b) “companies or firms” means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profitmaking.

The European Union, the European Atomic Energy Community and their Member States further recall that:

European Union law provides for the possibility to extend the treatment described above to branches and agencies of companies or firms not established in one of the Member States; and that, the application of Article 25 of the Energy Charter Treaty will allow only those derogations necessary to safeguard the preferential treatment resulting from the wider process of economic integration resulting from the Treaties establishing the European Union.”

- 6. Renumber Declaration n. 6, with respect to Article 40 as Declaration n. 3.
- 7. Renumber Declaration n. 7, with respect to Annex G(4), as Declaration n. 4; in relation only to the ECT as amended in 1998, rename the title as “with respect to Annex W(4)”; and replace the text with:
 - “(a) The European Atomic Energy Community (Euratom) and Ukraine declare that, in accordance with the Agreement on Partnership and Cooperation signed at Luxembourg on 14 June 1994 and the Interim Agreement thereto, initialled there the same day, trade in nuclear materials between them shall be exclusively governed by the provisions of the Agreement between the Euratom and the Cabinet of Ministers of Ukraine for Co-operation in the Peaceful Uses of Nuclear Energy.
 - (b) The Euratom and Kazakhstan declare that, in accordance with the Agreement on Partnership and Cooperation initialled at Brussels on 20 May 1994, trade in nuclear materials between them shall be exclusively governed by the provisions of the

Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the Euratom and the Government of the Republic of Kazakhstan.

- (c) The Euratom and Kyrgyzstan declare that, in accordance with the Agreement on Partnership and Cooperation initialled at Brussels on 31 May 1994, trade in nuclear materials between them shall be exclusively governed by the provisions of a specific agreement to be concluded between the European Atomic Energy Community and Kyrgyzstan.

Until entry into force of this specific agreement, the provisions of the Agreement on Trade and Economic and Commercial Cooperation between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics signed at Brussels on 18 December 1989 shall exclusively continue to apply for trade in nuclear materials between them.

- (d) The Euratom and Tajikistan declare that trade in nuclear materials between them shall be exclusively governed by the provisions of a specific agreement to be concluded between the European Atomic Energy Community and Tajikistan.

Until entry into force of this specific agreement, the provisions of the Agreement on Trade and Economic and Commercial Cooperation between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics signed at Brussels on 18 December 1989 shall exclusively continue to apply for trade in nuclear materials between them.

- (e) The Euratom and Uzbekistan declare that trade in nuclear materials between them shall be exclusively governed by the provisions of the Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the Euratom and the Government of the Republic of Uzbekistan.”

8. In the Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the ECT, delete Joint Declaration by the Russian Federation and the European Union.

III. CHANGES TO DECISIONS

1. In Decision n. 1, with respect to the Treaty as a whole, delete “Article 16 and”.
2. Delete Decision n. 2, with respect to Article 10(7).
3. Delete Decision n. 3, with respect to Article 14.
4. Delete Decision n. 4, with respect to Article 14(2).

5. Renumber Decision n. 5, with respect to Articles 24(4)(a) and 25, as Decision n. 2; in the title, replace “Articles 24(4)(a)” with “Articles 24(2)”; and in the text, replace “Article 1(7)(a)(ii)” with “Article 1(7)(b)”.

IV. OTHER CHANGES

1. Replace the text in Section VIII of the Final Act of the European Energy Charter Conference (as modified by the Protocol of Correction in 1996) with:

“The Charter Conference provided for in the Treaty shall henceforth be responsible for making decisions on requests to sign the Concluding Document of the Hague Conference on the European Energy Charter and the European Energy Charter adopted thereby as well as the Concluding Document of the Ministerial (Hague II) Conference on the International Energy Charter and the International Energy Charter adopted thereby.”