

Brussels, 3 September 2024

35TH MEETING OF THE ENERGY CHARTER CONFERENCE

3 December 2024

**PROPOSED MODIFICATIONS AND CHANGES TO ANNEXES
TO THE ENERGY CHARTER TREATY**

The Energy Charter Conference will be invited to approve the proposed modifications and changes to Annexes to the Energy Charter Treaty as attached hereto and communicated by the Secretariat to the Contracting Parties on 19 August 2022 with a further deletion of an obsolete reference to a date in the proposed Section C(2)(a) in Annex NI, 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.

These modifications and changes shall apply provisionally and enter into force in accordance with CCDEC [to be filled on the day of adoption].

I. MODIFICATIONS TO ANNEX NI

1. Contracting Parties confirmed that it was an exceptional measure to allow fossil fuels to be excluded from investment protection through the modifications to Annex NI as a result of the modernisation of the Energy Charter Treaty and do not set this as a basis for the negotiation of new agreements or revision of other agreements, including agreements related to the promotion and protection of investments.
2. Replace the heading with the following text referring to Annex EM in the amendment to the original ECT and to Annex EM I in the ECT as amended in 1998:

“Energy Materials and Products in Annex EM I under the subheadings 27.01-27.15, 2804.10 and 44.01-44.02, electrical energy (subheading 27.16) produced from them, synthetic fuels and activities excluded from the Definition of Economic Activity in the Energy Sector (In accordance with Article 1(5))”
3. Replace the text of the Annex with the following text referring to Annex EM in the amendment to the original ECT and to Annex EM I in the amendment to the ECT as amended in 1998:

“Section A

In relation to all Contracting Parties, the Energy Materials and Products and activities listed in this Section are excluded from the definition of Economic Activity in the Energy Sector.

27.07 Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents.

Ex 44.01 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms.

4401.10 - Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms.

44.02 Wood charcoal (including shell or nut charcoal), whether or not agglomerated.

Section B

- (1) In relation to investments made on or after 3 September 2025 in the European Union and its Member States which are Contracting Parties to this Treaty, the following Energy Materials and Products and activities are excluded from the definition of Economic Activity in the Energy Sector only in respect of Part III of this Treaty:

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- (a) (i) Energy Materials and Products in Annex EM I under subheadings 27.01 to 27.15 and electrical energy (subheading 27.16) produced from them.
- (ii) 2804.10 Hydrogen, with the exception of low carbon hydrogen and renewable hydrogen, which remain within the scope of the definition of Economic Activity in the Energy Sector. Low carbon hydrogen means hydrogen produced from non-renewable sources, with significantly reduced full life-cycle emissions resulting in less than 3tCO₂eq/tH₂. Renewable hydrogen means hydrogen produced from renewable sources, with the exception of biomass, resulting in full life-cycle emissions of less than 3tCO₂eq/tH₂.
- (iii) Synthetic fuels, with the exception of low carbon fuels, which remain within the scope of the definition of Economic Activity in the Energy Sector. Low carbon fuels mean recycled carbon fuels, low carbon hydrogen and synthetic gaseous and liquid fuels produced from low carbon hydrogen, which meet a 70% reduction in full life-cycle emissions. Recycled carbon fuels mean liquid and gaseous fuels that are produced from liquid or solid waste of non-renewable origin or from waste processing gas and exhaust gas of non-renewable origin.
- (iv) Economic activities concerning the capture, utilisation and storage of carbon dioxide.
- (b) Notwithstanding subparagraph (a):
- (i) Electrical energy (subheading 27.16) produced from petroleum gases and other gaseous hydrocarbons (subheading 27.11) through power plants and infrastructures enabling the use of renewable and low carbon gases, and emitting less than 380 g of CO₂ of fossil fuel origin per kWh of electricity, shall be excluded from the definition of Economic Activity in the Energy Sector only in respect of Part III of this Treaty after 31 December 2030.
- (ii) Electrical energy (subheading 27.16) produced from petroleum gases and other gaseous hydrocarbons (subheading 27.11) through power plants and infrastructures enabling the use of renewable and low carbon gases, and emitting less than 380 g of CO₂ of fossil fuel origin per kWh of electricity, related to investments that replace existing investments producing electrical energy (subheading 27.16) from Energy Materials and Products under the subheadings 27.01 to 27.10, shall be excluded from the definition of Economic Activity in the Energy Sector only in respect of Part III of this Treaty ten years after the date of entry into force of the modifications in Section B of this Annex approved on 3 December 2024.
- (iii) Transport, transmission, distribution of petroleum gases and other gaseous hydrocarbons (subheading 27.11) through pipelines, provided that the pipelines are able to transport safe and sustainable renewable and low carbon gases, including hydrogen, shall be excluded from the definition of Economic

Activity in the Energy Sector only in respect of Part III of this Treaty ten years after the date of entry into force of the modifications in Section B of this Annex approved on 3 December 2024.

- (2) In relation to investments made on or after 3 September 2025 in Switzerland, the following Energy Materials and Products and activities are excluded from the definition of Economic Activity in the Energy Sector only in respect of Part III of this Treaty:
- (a) 2804.10 Hydrogen, with the exception of low carbon hydrogen and renewable hydrogen, which remain within the scope of the definition of Economic Activity in the Energy Sector. Low carbon hydrogen means fossil-based hydrogen and electricity based hydrogen, with significantly reduced full life-cycle of greenhouse gas emissions resulting in less than 3 t CO₂ eq / t H₂. Renewable hydrogen means hydrogen produced from renewable sources resulting in life-cycle greenhouse gas emissions of less than 3 t CO₂ eq / t H₂.
 - (b) Synthetic fuels without significantly reduced life cycle greenhouse gas emissions compared to synthetic fuels produced from fossil fuels with no emissions abatement. Significantly is to be understood as achieving a threshold of 70% or higher.
- (3) In relation to investments made on or after 3 September 2025 in the United Kingdom, the following Energy Materials and Products and activities are excluded from the definition of Economic Activity in the Energy Sector only in respect of Part III of this Treaty:
- (a) Energy Materials and Products in Annex EM I under subheadings 27.01 to 27.15, and electrical energy (subheading 27.16) produced from them.
 - (b) 2804.10 Hydrogen, with the exception of low carbon hydrogen which remains in scope of the definition of Economic Activity in the Energy Sector. Low carbon hydrogen means:
 - (i) fossil-based hydrogen with carbon capture and storage;
 - (ii) electricity-based hydrogen; or
 - (iii) hydrogen produced from other production methods;which meets the United Kingdom's Low Carbon Hydrogen Standard as published when the investment is made.
 - (c) Subparagraphs (a) and (b) do not apply to the following Energy Materials and Products, which remain included in scope of the definition of Economic Activity in the Energy Sector:
 - (i) Electrical energy (subheading 27.16 of Annex EM I) produced from petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I)

through power plants and infrastructure using carbon capture and storage, where life-cycle greenhouse gas emissions are significantly reduced.

- (ii) Transport, transmission, and distribution of petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I) through pipelines provided the pipelines are capable of transporting renewable and low carbon gases.
- (4) (a) Until the entry into force of the amendments to this Treaty adopted 3 December 2024, Part III of this Treaty does not apply to a Contracting Party listed below in respect of an Investment in its Area of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Section B of this Annex:
- 1. Japan
- (b) Until the entry into force of the amendments to this Treaty adopted on 3 December 2024, a Contracting Party listed below does not give its unconditional consent in accordance with Article 26(3)(a) with respect to a dispute arising in relation to Investments of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Section B of this Annex:
- 1. Switzerland
 - 2. Türkiye

Section C

- (1) In relation to Investments made before 3 September 2025 in the European Union and its Member States which are Contracting Parties to this Treaty, the Energy Materials and Products and activities listed in subparagraph 1(a) of Section B of this Annex are excluded from the definition of Economic Activity in the Energy Sector only in relation to Part III of this Treaty ten years after the date of entry into force of the modifications in Section C of this Annex approved on 3 December 2024 but no later than 31 December 2040.
- (2) In relation to Investments made before 3 September 2025 in the United Kingdom:
- (a) Energy Materials and Products in Annex EM I under subheadings 27.01 to 27.04, and electrical energy (subheading 27.16) produced from them are excluded from the definition of Economic Activity in the Energy Sector only in relation to Part III of this Treaty from the date of entry into force of the modifications in Section C of this Annex approved on 3 December 2024.
 - (b) Energy Materials and Products in Annex EM I under subheadings 27.05 to 27.15, and electrical energy (subheading 27.16) produced from them are excluded from the definition of Economic Activity in the Energy Sector only in relation to Part III of

this Treaty 10 years after the date of entry into force of the modifications in Section C of this Annex approved on 3 December 2024.

- (c) Subparagraphs (a) and (b) do not apply to the following Energy Materials and Products, which remain included in scope of the definition of Economic Activity in the Energy Sector:
- (i) Electrical energy (subheading 27.16 of Annex EM I) produced from petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I) through power plants and infrastructure using carbon capture and storage, where life-cycle greenhouse gas emissions are significantly reduced.
 - (ii) Transport, transmission, and distribution of petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I) through pipelines provided the pipelines are capable of transporting renewable and low carbon gases.”

II. MODIFICATIONS TO ANNEX EM (original ECT) / EMI (ECT as amended in 1998)

1. At the beginning of the Annex, add:

“For the purpose of this Annex, “Ex” has been included to indicate that the product description referred to does not exhaust the entire range of products within the World Customs Organization Nomenclature headings or the Harmonized System codes listed below.”

2. Replace “26.12.10” with “2612.10” and “26.12.20” with “2612.20”; and at the end of the Annex, under the section “Other energy”, add:

“2207.10 Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher.

2804.10 Hydrogen.

2814.10 Anhydrous Ammonia.

2905.11 Methanol.

2915.11 Formic acid.

Biomass - meaning the biodegradable fraction of products, waste and residues from biological origin from agriculture, including vegetal and animal substances, from forestry and related industries, including fisheries and aquaculture, as well as the biodegradable fraction of waste, including industrial and municipal waste of biological origin.

Biogas - meaning gaseous fuels produced from biomass.

Synthetic fuels - meaning fuels, which are synthesized from hydrogen and carbon streams.”

III. MODIFICATIONS TO ANNEX G (original ECT) / W (ECT as amended in 1998)

1. In the heading and in the text, replace all references to “29” with “32”.

IV. CHANGES TO ANNEXES

1. Replace the table of Contents of Annexes as follows:

To the original ECT	To the ECT as amended in 1998
<p>1. Annex EM Energy Materials and Products (In accordance with Article 1(4))</p>	<p>1. Annex EM I Energy Materials and Products (In accordance with Article 1(4))</p> <p>2. Annex EM II Energy Materials and Products (In accordance with Article 1(4))</p>
<p>2. Annex NI Energy Materials and Products in Annex EM under the subheadings 27.01-27.15, 2804.10 and 44.01-44.02, electrical energy (subheading 27.16) produced from them, synthetic fuels and activities excluded from the Definition of Economic Activity in the Energy Sector (In accordance with Article 1(5))</p>	<p>3. Annex EQ I List of Energy-Related Equipment (In accordance with Article 1(4bis))</p> <p>4. Annex EQ II List of Energy-Related Equipment (In accordance with Article 1(4bis))</p> <p>5. Annex NI Energy Materials and Products in Annex EM I under the subheadings 27.01-27.15, 2804.10 and 44.01-44.02, electrical energy (subheading 27.16) produced from them, synthetic fuels and activities excluded from the Definition of Economic Activity in the Energy Sector (In accordance with Article 1(5))</p>

<p>3. Annex TRM Notification and Phase-Out (TRIMs) (In accordance with Article 5(4))</p> <p>4. Annex N List of Contracting Parties requiring at least 3 separate Areas to be involved in a Transit (In accordance with Article 7(1)ii)</p> <p>5. Annex VC List of Contracting Parties which have made Voluntary Binding Commitments in Respect of Article 10(5) (In accordance with Article 10(7))</p> <p>6. Annex ID List of Contracting Parties not allowing an Investor to resubmit the same dispute to International Arbitration at a later stage under Article 26 (In accordance with Article 26(3)(b)(i))</p> <p>7. Annex IA List of Contracting Parties Not Allowing an Investor or Contracting Party to Submit a Dispute Concerning Article 10(13) to International Arbitration (In accordance with Articles 26(3)(c) and 30(2))</p> <p>8. Annex P Special Sub-National Dispute Procedure (In accordance with Article 30(3)(i))</p> <p>9. Annex G Exceptions and Rules governing the Application of the Provisions of the GATT and Related Instruments (In accordance with Article 32(2)(a))</p>	<p>6. Annex TRM Notification and Phase-Out (TRIMs) (In accordance with Article 5(4))</p> <p>7. Annex N List of Contracting Parties requiring at least 3 separate Areas to be involved in a Transit (In accordance with Article 7(1)ii)</p> <p>8. Annex VC List of Contracting Parties which have made Voluntary Binding Commitments in Respect of Article 10(5) (In accordance with Article 10(7))</p> <p>9. Annex ID List of Contracting Parties not allowing an Investor to resubmit the same dispute to International Arbitration at a later stage under Article 26 (In accordance with Article 26(3)(b)(i))</p> <p>10. Annex IA List of Contracting Parties Not Allowing an Investor or Contracting Party to Submit a Dispute Concerning Article 10(13) to International Arbitration (In accordance with Articles 26(3)(c) and 30(2))</p> <p>11. Annex P Special Sub-National Dispute Procedure” (In accordance with Article 30(3)(i))</p> <p>12. Annex W Exceptions and Rules Governing the Application of the Provisions of the WTO Agreement (In accordance with Article 32(2)(a))</p> <p>13. Annex BR List of Contracting Parties which Shall Not Increase any Customs Duty or Other Charge</p>
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<p>10. Annex D Interim Provisions for Trade Dispute Settlement (In accordance with Article 32(7))</p> <p>11. Annex B Formula for allocating Charter Costs (In accordance with Article 37(3))</p> <p>12. Annex PD Public Debt (In accordance with Article 26(12))</p> <p>13. Annex NPT List of Contracting Parties to which Part III does not apply in respect of an Investment in their Area of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Annex NI (In accordance with Article 16 bis)</p> <p>14. Annex IA-NI List of Contracting Parties not giving their unconditional consent to the submission to international arbitration of a dispute related to an Investment in their Area of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Annex NI (In accordance with Article 26(3)(d))</p>	<p>above the Level Resulting from their Commitments or any Provisions Applicable to Them under the WTO Agreement (In accordance with Article 32(7))</p> <p>14. Annex BRQ List of Contracting Parties which Shall Not Increase any Customs Duty or Other Charge above the Level Resulting from their Commitments or any Provisions Applicable to Them under the WTO Agreement (In accordance with Article 32(7))</p> <p>15. Annex D Interim Provisions for Trade Dispute Settlement (In accordance with Article 32(9))</p> <p>16. Annex B Formula for allocating Charter Costs (In accordance with Article 37(3))</p> <p>17. Annex PD Public Debt (In accordance with Article 26(12))</p> <p>18. Annex NPT List of Contracting Parties to which Part III does not apply in respect of an Investment in their Area of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Annex NI (In accordance with Article 16 bis)</p> <p>19. Annex IA-NI List of Contracting Parties not giving their unconditional consent to the submission to international arbitration of a dispute related to an Investment in their Area of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Annex NI (In accordance with Article 26(3)(d))</p>
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2. In Annex EQ I, before “Ex 73.04*” add:

“68.06 Slog wool, rock wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials; mixtures and articles of heat insulating, sound-insulating or sound-absorbing mineral materials, other than those of heading 68.11 or 68.12 or of Chapter 69.

70.08 Multiple-walled insulating units of glass.”

3. In Annex EQ I, in Ex 85.17, add “smartphones and other” after “including”.

4. In Annex EQ I, replace “85.28.41” with “85.28.42”; replace “85.28.51” with “85.28.52”; replace “85.28.61” with “85.28.62”; and replace in all the three “Of a kind solely or principally used in an automatic data processing system of heading 84.71” with “Capable of directly connecting to and designed for use with an automatic data processing system of heading 84.71”.

5. In Annex EQ I, replace the heading of 85.41 with “Semiconductor devices (for example, diodes, transistors, semiconductor-based transducers); photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED), whether or not assembled with other light-emitting diodes (LED); mounted piezo-electric crystals.”; and add “(LED):” after “diodes” in Ex 8541.40.

6. In Annex EQ I, in the entry after “Ex 9030.10”, add “(other than those for measuring or checking semiconductor wafers or devices)” after “power”.

7. In the heading of Annex N, replace “Article 7(10)(a)” with “Article 7(1)(ii)”; and delete the reference to Canada and United States of America.

8. In the heading of Annex VC, replace “Article 10(3)” with “Article 10(5)”, and “Article 10(6)” with “Article 10(7)”.

9. Replace the list in Annex ID with:

- “1. Azerbaijan
2. Bosnia and Herzegovina
3. Bulgaria
4. Croatia
5. Cyprus
6. The Czech Republic
7. European Union and Euratom
8. Finland
9. Greece
10. Hungary
11. Ireland
12. Italy

13. Japan
 14. Kazakhstan
 15. Mongolia
 16. North Macedonia
 17. Norway
 18. Poland
 19. Portugal
 20. Romania
 21. Slovenia
 22. Spain
 23. Sweden
 24. Türkiye”.
10. Replace the heading of Annex IA with “List of Contracting Parties Not Allowing an Investor or Contracting Party to Submit a Dispute Concerning Article 10(13) to International Arbitration (In accordance with Articles 26(3)(c) and 30(2))”; and replace the listed countries with:
- “1. Hungary
 2. Norway”.
11. In the heading of Annex P, replace “Article 27(3)(i)” with “Article 30(3)(i)”; and delete in Part I the references to Canada and Australia.
12. In the headings of Annexes BR and BRQ, replace “Article 29(7)” with “Article 32(7)”.
13. In the heading and in the text of Annex D, replace all references to “29” with “32”.