

European Union text proposal for the modernisation of the Energy Charter Treaty

*This document is the European Union's (EU) **additional submission** to its text proposal for the modernisation of the Energy Charter Treaty (ECT), sent to the ECT Secretariat on 19 May 2020, and tabled for discussion with the Contracting Parties to the ECT. It complements the placeholders for paragraphs (4), (4bis) and (5) of Article 1 (Definitions). The actual text in the final agreement will be a result of negotiations between the EU and the Contracting Partners.*

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

NB Reading guidelines: *The text proposals are based on the current text of the ECT, whereas text proposed by the EU that does not feature yet in the Treaty is underlined. Text of the ECT that is to be deleted according to the EU text proposal, is shown in ~~strike through~~.*

Introduction

As outlined in the conclusions on climate and energy diplomacy adopted by the Council of the European Union on 25 January 2021, climate change is an existential threat to humanity. Worldwide greenhouse gas (GHG) emissions remain on an unsustainable trajectory despite short-term emission reductions due to the impact of the COVID-19 pandemic. Global climate action still falls short of what is required to achieve the long-term goals of the Paris Agreement and thus the 2030 Agenda for Sustainable Development.

The EU emphasises the urgent need for progress in the negotiations for the modernisation of the Energy Charter Treaty, with a view to driving an inclusive global energy transition in alignment with Paris Agreement objectives.

The Paris Agreement, which was ratified by all but one Contracting Parties to the Energy Charter Treaty, provides the indispensable multilateral framework governing global climate action.

In line with the Paris Agreement and its long term decarbonisation and energy transition policies, the EU is bound to discourage all further investments into fossil fuel based energy infrastructure projects, unless they are fully consistent with an ambitious, clearly defined pathway towards climate neutrality in line with the long-term objectives of the Paris Agreement and best available science. The EU will support international efforts to reduce the environmental and GHG impact of existing fossil fuel infrastructure.

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[...]

Article 1: Definitions

[Paragraphs 1-3]

(4) “Energy Materials and Products”, based on the Harmonised System of the World Customs Organization and the Combined Nomenclature of the ~~European Communities~~ European Union, means the items included in Annexes EM I or EM II.

The provisions of Part III of this Treaty shall not apply to Energy Materials and Products in Annex EM I, under the heading “Coal, Natural Gas, Petroleum and Petroleum Products, Electrical Energy”, subheadings 27.01 to 27.15, and to the production of Electrical energy (27.16), if it is produced from one of the products in subheadings 27.01 to 27.15, in relation to an Investment made in the Area of a Contracting Party after the date of entry into force or provisional application of the amendment to the Treaty.

However, the provisions of Part III of this Treaty shall apply until 31 December 2030 to the production of Electrical energy (27.16) produced from Petroleum gases and other gaseous hydrocarbons (27.11), through power plants and infrastructure 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, in relation to such Investments. If Investments, referred to in the preceding sentence, replace existing Investments producing Electrical energy (27.16) from Energy Materials and Products under the subheadings 27.01 to 27.10, the provisions of Part III of this Treaty shall apply ten years after the entry into force or provisional application of the amendment to the Treaty, but not later than 31 December 2040.

The provisions of Part III of the Treaty shall apply ten years after the entry into force or provisional application of the amendment to the Treaty, but not later than 31 December 2040, to Investments in gas pipelines made in the Area of a Contracting Party after the date of entry into force or provisional application of the amendment to the Treaty, provided that the pipelines are able to transport safe and sustainable renewable and low-carbon gases, including hydrogen.

Ten years after the entry into force or provisional application of the amendment to the Treaty, but not later than 31 December 2040, the provisions of Part III of this Treaty shall cease to apply to Energy Materials and Products in Annex EM I under the heading “Coal, Natural Gas, Petroleum and Products, Electrical Energy”, subheadings 27.01 to 27.15, as well as to the production of Electrical energy (27.16) if it is produced from one of the products in subheadings 27.01 to 27.15, in relation to any Investment made in the Area of a Contracting Party before the date of entry into force or provisional application of the amendment to the Treaty.

[The following Harmonised System codes and definition should be added to Annex EM I, in the “Other Energy” section:]

2207.10 Udenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher

2905.11 Methanol

2915.11 Formic acid

“Low-carbon hydrogen” - means fossil-based hydrogen with carbon capture and electricity-based hydrogen, with significantly reduced full life-cycle greenhouse gas emissions.

“Renewable hydrogen” - means hydrogen produced with electricity from renewable sources.

“Biomass” - means 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” - means gaseous fuels produced from biomass.

(4bis) “Energy-Related Equipment”, based on the Harmonised System of the World Customs Organization, means the items included in Annexes EQ I or EQ II.

Further to the items included in Annex EQ I or EQ II, the “Energy-Related Equipment” shall also comprise energy efficient goods used for energy purposes, such as equipment with high energy efficiency performance, or other products enabling the reduction of energy use, as well as materials and products used in the construction or renovation of energy-efficient buildings.

[The following Harmonised System codes should be added to Annex EQ I:]

6806 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.

7008 Multiple-walled insulating units of glass.

(5) “Economic Activity in the Energy Sector” means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products, except those included in Annex NI, or concerning the distribution of heat to multiple premises.

[...]