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**ENER**

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**WORKING DOCUMENT**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Definition of economic activity in the energy sector

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Delegations will find in the annex a courtesy document from the Commission on the definition of economic activity in the energy sector to facilitate Member States discussions in the Energy Working Party. All possible changes to the initial draft of the definition are marked in red.

## ANNEX: EU 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~~.*

### EU text proposal for the modernisation of the Energy Charter Treaty (ECT)

[...]

#### 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, means the items included in Annexes EM I or EM II.

By way of exception, the provisions ~~[of Part III] (FR)~~ 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] (FR)~~ after the date of entry into force or provisional application of the amendment to the Treaty. However, the provisions ~~[of Part III] (FR)~~ of this Treaty shall apply until 31 December ~~[2025] (AT, LU) / 2030 (COM)~~ 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 ~~[100 g] (ES, LU) / [250 g] (FR, NL) / [380 g] (AT) / 550 g (COM)~~ of CO<sub>2</sub> of fossil fuel origin per kWh of electricity ~~[, in relation to such Investments] (FR)~~. If ~~[Investments power plants] (FR)~~, referred to in the preceding sentence, replace existing ~~[ones Investments] (FR)~~ producing Electrical energy (27.16) from Energy Materials and Products under the subheadings 27.01 to 27.10, the provisions ~~[of Part III] (FR)~~ of this Treaty shall apply until 31 December ~~2030 (AT, LU) / 2040 (COM)~~.

The provisions ~~[of Part III] (FR)~~ of the Treaty shall apply until 31 December 2040 / ~~[after 31 December 2040] (SK) [to Investments in gas pipelines made in the Area of a Contracting Party] (FR)~~ after the date of entry into force or provisional application of the amendment to

the Treaty, provided that the pipelines are able to transport renewable and low-carbon gases, as well as hydrogen. / [The provisions of Part III of the Treaty shall apply from 31 December 2040 only to investments in gas pipelines made in the territory of a Contracting Party after the entry into force or provisional application of the amendment to the Treaty, provided that the pipelines transport exclusively renewable hydrogen, synthetic methane or biogas.] (AT)

[Five] (AT, ES, LU) / Ten (COM) years after the entry into force or provisional application of the amendment to the Treaty, the provisions [of Part III] (FR) 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 subheading 27.01 to 27.15, [in relation to any Investment made in the Area of a Contracting Party] (FR)-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

~~2804.10~~            ~~Hydrogen~~

2905.11            Methanol

2915.11            Formic acid

["Renewable / clean hydrogen"] (AT, BE, ES)– means hydrogen produced through the electrolysis of water (in an electrolyser, powered by electricity), and with the electricity stemming from renewable sources

["Decarbonised hydrogen"] (FR)

“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 (AT)

[Synthetic methane] (AT)

The abovementioned biofuels, bioliquids and biomass fuels should always have to be produced in a sustainable manner, and required to fulfil sustainability and greenhouse gas emissions saving criteria. (ES, LU)

(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] (FR), 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, ~~as well as the operation and maintenance of Energy-Related Equipment.~~ (FR)

[...]