



Brussels, 19 September 2016
(OR. en)

12358/16

ENER 325

'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Energy Charter Treaty
- Access to *travaux préparatoires*

1. On 31 May 2016, the Energy Working Party held a first discussion on a draft from the Energy Charter Secretariat on access to information and transparency¹ which was subsequently formalised by the said Secretariat as a proposal to be adopted by 'written procedure' under the rules of procedure of the Energy Charter Conference ("the proposal")². The proposal provides for:
 - a. a new policy on access to the *travaux préparatoires*, and
 - b. de-restriction of some documents of the *travaux préparatoires* relating to the negotiation of the European Energy Charter, the Energy Charter Treaty, its related Protocols (1991-1994) and the Trade Amendment (1994-1998). In addition, the Secretariat has recordings of some of the meetings(1991-1994) of the negotiating groups (the audio *travaux préparatoires*),

¹ Document StG 80.

² Document CS (16) 1945 CC 559.

- c. to de-restrict the official documents issued by the (Provisional) Conference and the (Provisional) Secretariat in relation to the negotiations of the Energy Charter, the Energy Charter Treaty, its related protocols (1991-1994) and the Trade Amendment (1994-1998).
2. The purpose of the Energy Charter Secretariat's proposal is to :
 - a. confirm the new policy on access to the *travaux préparatoires* of the European Energy Charter, the Energy Charter Treaty, its related Protocols (1991-1994), and the Trade Amendment (1994-1998) as set out in Annex I;
 - b. de-restrict and allow the publication online of the documents listed in Annex II;
 - c. de-restrict the official documents issued by the (Provisional) Conference and the (Provisional) Secretariat in relation to the negotiations of the Energy Charter, the Energy Charter Treaty, its related protocols (1991-1994) and the Trade Amendment (1994-1998).
3. The Commission had submitted draft lines to take to the Working Party on 27 May 2016 which suggested following the approach by the Energy Charter Secretariat.
4. Following the second examination of the Energy Charter Secretariat's proposal by the Energy Working Party at its meeting on 19 September 2016, the Commission continued to support the proposal of the Secretariat. The Presidency noted that no delegation had difficulties with the Energy Charter Secretariat's proposal and thus concluded that the Working Party could agree to it.
5. In light of the above, the COREPER is invited to recommend that the Council, as an A item, at one of its forthcoming meetings:
 - confirms the agreement reached at the Energy Working Party on 19 September 2016; and
 - authorises the Commission to agree on behalf of the European Union to the proposal from the Energy Charter Secretariat (1) as set out in the Annex I and II to this note, and (2) to de-restrict the official documents issued by the (Provisional) Conference and the (Provisional) Secretariat in relation to the negotiations of the Energy Charter, the Energy Charter Treaty, its related protocols (1991-1994) and the Trade Amendment (1994-1998).

New policy on access to the *travaux préparatoires*

a. In relation to documentary *travaux préparatoires*:

The documentary *travaux préparatoires* are composed of:

- Drafts of the Energy Charter, the Energy Charter Treaty, its Protocol provisions (1991-1994), and the Trade Amendment (1994-1998), including comments by negotiating parties;
- Position papers issued by negotiating parties, private and public companies and other international organisations;
- Correspondence between members of the Secretariat, members of the Working Groups and delegations;
- Reports of the Legal Sub-Group; and
- Meeting invitations, agendas and other administrative documents

These documents fall within three categories:

- i. Documents which do not identifiably express the views of specific countries, organisations or individuals;
- ii. Documents which identifiably express the views of specific countries, organisations or individuals but that do not contain any express restriction to their dissemination;
- iii. Documents expressly containing a confidentiality/restriction stamp on them.

All enquirers may consult all of the documentary *travaux préparatoires* referred to above, and to take copies of documents belonging to categories (i) and (ii);

Documents belonging to category (iii) cannot be reproduced unless their issuer has made them accessible to the public or grants specific consent in writing for its reproduction.

Any requests for exceptions to the above policy should be made in writing to the Secretary General of the Secretariat, who will request the confirmation of the country, individual or organization concerned.

- b. In relation to audio *travaux préparatoires*: All enquirers may listen to the audio *travaux préparatoires* at the Secretariat's office, but no enquirers may make recordings or copies of any of the audio *travaux préparatoires*.

List of documents to be available on the public website

The documents 26/27/30/36/37 are already publicly available at the Energy Charter website.³

1. Draft Treaty, Basic Protocol to the European Energy Charter, 20 August 1991.
2. BP 2, Basic Protocol, 12 September 1991.
3. BA 4, Basic Agreement, 31 October 1991.
4. BA 6, Basic Agreement, 21 January 1992.
5. BA 12, Basic Agreement, 9 April 1992.
6. BA 13, Basic Agreement, 19 June 1992.
7. BA 14, Basic Agreement, 24 June 1992.
8. BA-15, Basic Agreement, 12 August 1992.
9. BA-18, Trade and transit related Articles, 18 September 1992.
10. BA-22, Basic Agreement, 21 October 1992.
11. BA-26, Basic Agreement, 25 November 1992.
12. BA-31, Basic Agreement, 21 December 1992.
13. BA-35, Basic Agreement, 9 February 1993.
14. BA-37, Basic Agreement, 1 March 1993.
15. CONF 50, Draft Energy Charter Treaty (Basic Agreement) – Compromise text, 15 March 1993.
16. CONF 56, Draft ECT – Second version, 1 May 1993.
17. CONF 60, Draft ECT – third version, 1 June 1993.
18. CONF 64, Draft ECT – fourth version, 7 July 1993.
19. CONF 72, Draft ECT – fifth version, 11 October 1993.
20. CONF 82, Draft ECT – sixth version, 20 December 1993.
21. CONF 96, Draft ECT – seventh version, 17 March 1994.
22. CONF 98, Draft ECT – Chairman`s Compromise Text, 22 April 1994.
23. Interim Text – Final Act of the Conference on the ECT, 20 June 1994.
24. Interim Text – Final Act of the Conference on the ECT, 25 June 1994.
25. CONF 104, Note from the Conference Chairman – Adoption of the ECT, 14 September 1994.
26. Final Act of the European Energy Charter Conference, 17 December 1994.
27. The Energy Charter Treaty, 17 December 1994.
28. CONF 115, Summary of the Sixteenth Plenary Session of the Energy Charter Conference - Adoption of the Energy Charter Treaty, 6 January 1995.
29. T 31, Consolidated draft text for a tariff standstill, 21 June 1996.
30. Protocol of Correction to the Energy Charter Treaty, 2 August 1996.
31. T 36, Tariff Standstill; Draft Chairman`s compromise proposal, 30 October 1996.
32. CC 96, Agenda item 4 – Working Group II (Draft Trade Amendment), 17 October 1997.
33. CC 100, Trade Amendment, 14 November 1997.
34. CC 107, Trade Amendment and Inclusion of Energy-Related Equipment, 3 December 1997.
35. CC 113, Texts for Adoption, 4 March 1998.
36. 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, 24 April 1998.
37. CCDEC 2013 (17), Conference decision on Technical changes to Annexes EM I, NI and EQ I, 6 December 2013.

³ <http://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/> (authenticated/certified copies)