



EUROPEAN COMMISSION
LEGAL SERVICE

Brussels, 28 January 2021

SJ. [REDACTED]

SENSITIVE*

NOTE FOR THE ATTENTION OF MR COLIN BROWN, DG TRADE

Subject: Request for a legal opinion on questions relating to a possible withdrawal of the Union from the Energy Charter Treaty

Ref.: Your note TRADE.F.3/[REDACTED](2020)8580102

Please find below the replies of the Legal Service to the questions raised in the above captioned note with regard to a possible withdrawal of the European Union from the Energy Charter Treaty ('ECT'). For ease of reference, the text of the questions is reproduced in bold.

1. **According to Article 47 ECT a Contracting Party may withdraw from the Energy Charter Treaty by written notification of its withdrawal to the depository of the Treaty. Such withdrawal shall take effect upon the expiry of one year after the date of the receipt of the notification, or any later date specified in the notification or withdrawal. Both the European Union and Euratom are Contracting Parties to the ECT, as well as all but one EU Member States (Italy withdrew from the ECT in 2016).**
 - a. **What procedures would have to be followed within the EU in order for the European Union to withdraw from the ECT?**



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- b. What additional procedures (if any) would be required for a withdrawal of Euratom?**



- 2. In light of Opinion 2/15 of the CJEU, the ECT covers areas for which the competences are shared between the Union and its Member States. All EU Member States except Italy are currently Contracting Parties to the ECT. If the European Union and Euratom withdrew from the ECT, would this require all EU Member States to also withdraw from the ECT?**



¹ See attached Opinion of the Council Legal Service of 14 February 2019, para. 20.

² Ibid.

³ Ibid., para. 22.

⁴ Ibid. para. 12.

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- a. In the affirmative, when would the withdrawal become effective for the European Union and Euratom? Would the withdrawal only become effective once the last of the EU Member States has withdrawn from the ECT?**



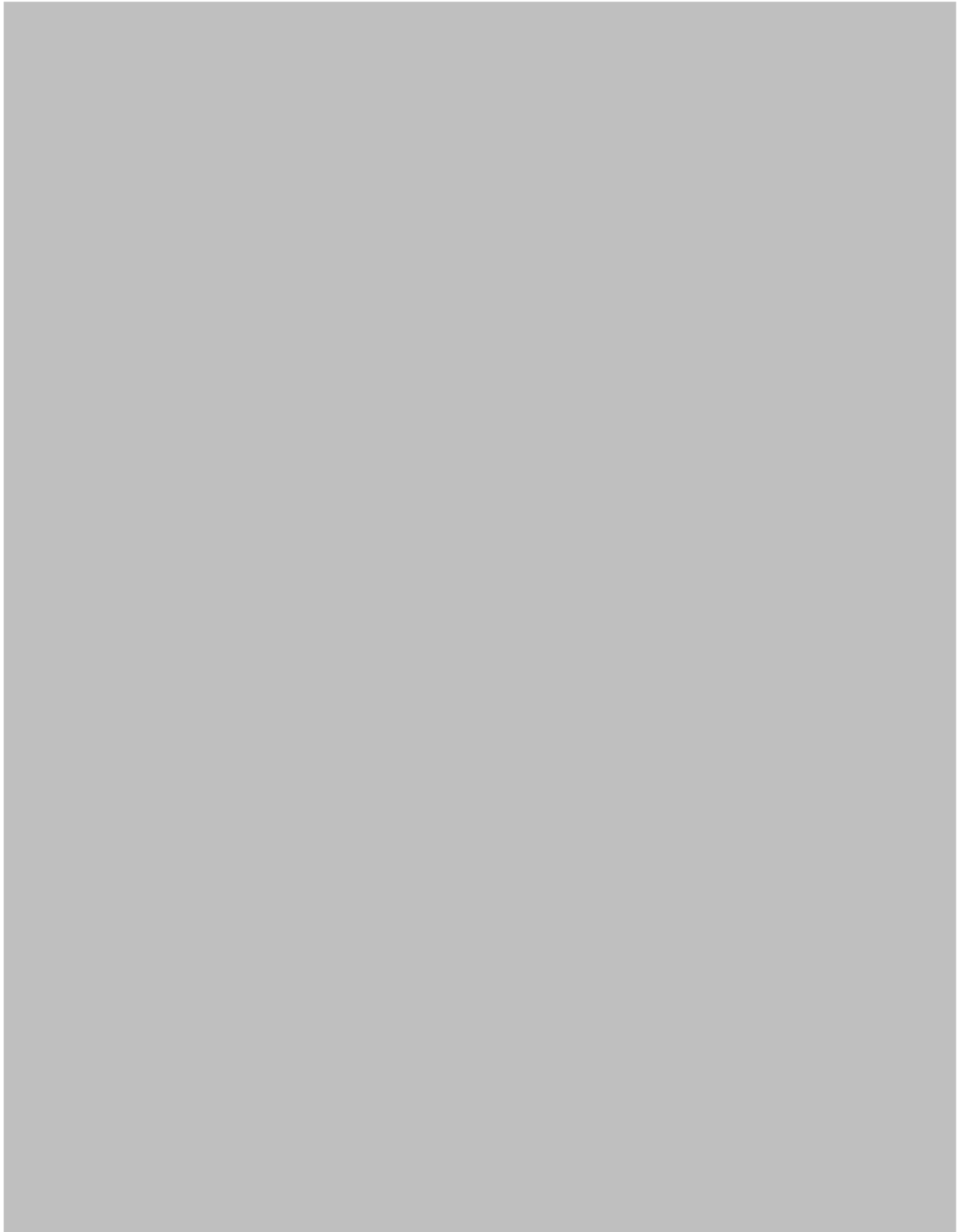
- b. If a withdrawal by the EU and Euratom would not require all EU Member States to withdraw from the ECT, would EU Member States need to be empowered by the Union to remain Parties to the ECT, and if yes, for which parts of the ECT?**





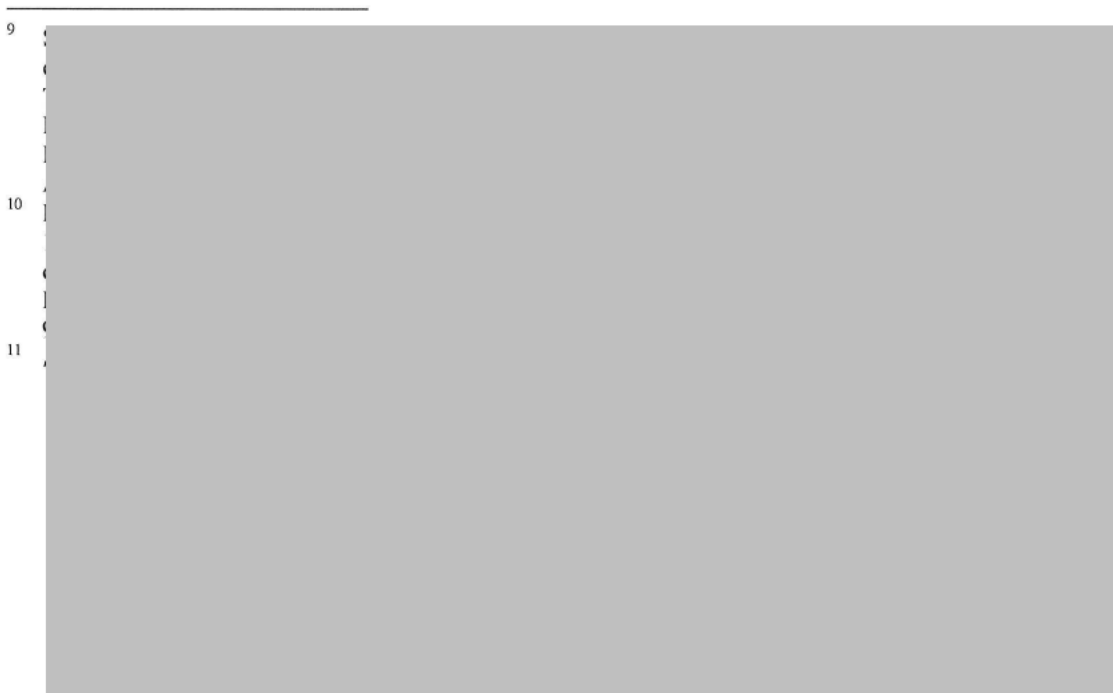
3. In lieu of a withdrawal, would it be possible for the EU to agree with certain Contracting Parties of the ECT on an inter se amendment of the ECT pursuant to Article 41 VCLT (applying e.g. to the definition of the covered Energy Materials and Products or to reformed “right-to-regulate”-provisions)?







If yes, would the EU Member States also need to become Parties to such an amendment in their individual capacity?





- 4. Would the withdrawal of the Union (and its Member States) from the ECT in any way affect the Union's (and the Member States') position under the International Energy Charter?**



[e-signed]

Lucio GUSSETTI

[e-signed]

Ben SMULDERS

c.c.:



