

Brussels, 29 November 2015

Related documents: CC 531, Mess. 1262/15

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Adoption of the Energy Charter Secretariat's Work Programme for 2016-2017

By document CC 531, dated 9 November 2015, delegations were invited to approve the Secretariat's Programme of Work for 2016-2017. As specified by Rule 20 of the Rules of Procedure concerning the adoption of decisions by correspondence, members of the Energy Charter Conference were informed that any delegation that wished to object to this proposal should notify the Secretariat of its position in writing by 29 November 2015.

Having received no specific objections, on 29 November 2015 the Conference **approved** the Secretariat's Programme of Work for 2016-2017.

ENERGY CHARTER SECRETARIAT'S PROGRAMME OF WORK FOR 2016-2017

Summary

The Program of Work 2016 and beyond contains proposals for activities based on

- (i) the conclusions of the 2014 Review,
- (ii) the anticipated conclusions of the relevant assessments (of ICMS and EE reports, CONEXO policy, Blue Book and implementation of ECT Transit provisions) and
- (iii) the replies to the proposals for the 2nd phase of modernisation.

Most of the proposals are in fact a continuation of ongoing activities, adapted after the recent review process. The activities included in Part 1 are intended to be financed through the regular budget, while implementation of activities in Part 2 is subject to available external financing through voluntary contributions or partnership with other organisations. The timeline for implementation of the outlined activities is 2016-2017. Wherever possible, the PoW indicates the year of completion of the activity.

Due to the proposed changes in the establishment table as presented in the draft budget, the PoW indicates only the ECS officers in charge of an activity. As a general rule, experts in the implementation of all activities in the PoW will be supported by project staff, seconded experts, research fellows and interns.

The Program of Work takes into account the comments made at the Budget Committee meetings of 17 September and 20 October.

Part 1: Activities financed by the core budget

- **Investment Group**

1. **Amicable investment dispute settlement** – The Secretariat will continue to work with the group of external experts to produce a framework for the implementation of the option of mediation/conciliation under Article 26 ECT (including guidelines setting out the steps to be taken by States in the event that an investor requests mediation, and standards for potential mediators). While not having the same priority, the Secretariat will also prepare a clear framework for the Secretary General's good offices and guidelines to be used in the event that a party wishes to employ this mechanism.

Ongoing.

→ *Conference decision* in 2016 approving/welcoming the guidelines and the applicable frameworks.

ECS officer in charge: Legal Counsel and Senior Investment Expert

2. The Review conducted in 2014 under ECT Article 34(7) requested the Secretariat to develop a methodology to identify and discuss less obvious and more complex **non-discriminatory barriers specific to investments in the pre-investment** phase in the energy sector. Based on intermediate results of the Monitoring non-conforming measures of Contracting Parties/Signatories in the pre investment phase (Blue Book), the Secretariat will explore different means of addressing such obstacles. Particular focus will be on addressing exceptions to MFN and to national treatment. Some analysis will also be made on quantitative restrictions based upon legislation, or measures having similar effect.

If this analysis shows that several of these types of obstacles in the pre-investment phase remain, the Investment Group will propose further steps aimed at eliminating such obstacles.

Proposed by the Art. 34(7) Review.

→ *Series of analyses* on obstacles in the pre-investment stage to be produced in 2016.

→ *Conference decision* in 2016 approving/welcoming the ground paper on the conditions to further discussing and exploring a new legal instrument providing the non-discriminatory treatment in the establishment of investments.

ECS officer in charge: Director, Senior Investment Expert, Investment expert

3. With the help of the Legal Advisory Task Force the Secretariat is working on a **guide/handbook on general provisions applicable to investment agreements in the energy sector** (including explanatory notes, policy options and model clauses on specific topics). This is designed to help and empower governments in their negotiations of complex investment agreements in the energy sector and follows the successful experience of the cross-border pipeline model agreements.

Ongoing.

→ *Conference decision* welcoming the guide/handbook in 2016.

ECS officer in charge: Legal Counsel, Investment Expert

4. Energy Investment Risk Assessment – **preparation for launch of new flagship publication on Energy Charter Investment Risk Assessment (ECIRA)**. The new publication could combine a comparative analysis of the investment climate in the constituency and serve as an important tool for enhancing regional and global cooperation. It could look at both pre-investment and post-investment legal protection, political risks. Contrary to the ICMS reports (which focus on individual countries), ECIRA would be horizontal and include all members and observers.
Proposed by Art. 34(7) Review.

→ *Conference decision* approving the publication's structure in 2016 and welcoming the first edition in 2017.

ECS officer in charge: Senior Investment Expert, Investment Expert

5. **ICMS reports** - to continue preparation of improved Investment Climate and Market Structure reports on a voluntary basis with interested Contracting Parties, outreach and observer countries (2 reports p.a.). In cooperation with other relevant fora, international organisations, donors and IFIs, follow up and support the implementation of the policy recommendations, stemming from ICMS reports and related regional policy discussions.
Ongoing.

→ *Conference decisions* approving the Policy Conclusions and Recommendations of two countries in 2016.

ECS officer in charge: Director, Senior Investment Expert¹, Investment Expert

- **Trade and Transit Group**

6. In line with the conclusions of the review of the implementation of ECT transit provisions either to resume negotiations of a **Multilateral framework Agreement on Transit** of energy resources on a new basis or a **regional transit protocol** in case of interest expressed by specific countries.
Proposed by the Review of implementation of Transit Provisions

→ *Analytical paper on the different alternatives to be adopted and Conference decision* in 2016 approving/welcoming the ground paper on the conditions to further discussing and exploring the basis for a Multilateral Framework Agreement on Transit.

ECS officer in charge: Director, Transit Expert

¹ He will be seconded by an expert from the reviewed country.

7. **Commentary of transit conciliation rules:** In 2015, the Conference approved the amendments of the conciliation rules and the TTG requested the Secretariat to prepare a commentary to serve as an explanatory (non-binding) tool of the Rules (to facilitate its understanding and application).

Ongoing.

→ *Conference decision* welcoming the Commentary in 2016.

ECS officer in charge: Legal Counsel and Transit Expert

- **PEEREA Working Group**

8. **IdEER reports and follow up** - Continue to develop In-depth energy efficiency review reports, based on the unique characteristics, effectiveness and reliability of such reviews. The current objectives were found to be relevant and the reviews should continue to serve as a tool to initiate policy discussions, facilitate exchange information, and encourage national policy decision makers to consider energy efficiency as an important priority and tool to achieve energy security within the overall national energy policy. In cooperation with other relevant fora, international organisations, donors and IFIs, support the implementation of the policy recommendation stemming from IdEER reports and related regional policy discussions.

Ongoing.

→ *Conference decision* approving the Policy Conclusions and Recommendations of two countries in 2016.

ECS officer in charge: Director, Senior Energy Efficiency Expert²

- **Strategy Group**

9. Explore possibilities and challenges for the Energy Charter to acquire **international legal personality** and to clarify the **institutional structure** (and possible new name) of the organisation. This would facilitate a better understanding and increase attractiveness for non-members; as well as increase the operational efficacy of the Energy Charter.

Proposed by Art. 34(7) Review

² He will be seconded by an expert from the reviewed country.

The Strategy Group will continue hosting the forum for energy dialogue to contribute for a strengthened partnership between all stakeholders to enhance global energy security and as an instrument for CONEXO.

→ *Analytical papers* in 2016 on the international legal personality and proposals for an institutional name for the organisation. Potential Conference Decision in 2016 adopting/welcoming the suggested proposals.

→ *Forum* for energy dialogue

ECS officer in charge: Legal Counsel, Senior Advisor

- **WG on Procedural Issues**

10. The Secretariat will continue providing support to the WG on Procedural Issues on topics such as the rules of appointment of a Deputy SG and the terms of reference of a Steering Committee.

Ongoing.

→ *Conference decision* in 2016.

ECS officer in charge: Legal Counsel, Senior Adviser

- **CONEXO**

11. The ECT expansion process has gained momentum through the adoption of the International Energy Charter, which was signed or adopted by 75 parties including 72 countries and 3 regional integrated organisations in May. **Expansion** means the process to upgrade the status from observer to full Contracting Party. The geographical focus will be determined by CONEXO review, external funding and political commitment of governments involved. The Secretariat will assist countries in the preparation of the **accession report on compatibility of the domestic legal system** with the ECT. The Secretariat will also assist countries in the preparation of the **accession report on Investment Climate and Exceptions to National Treatment**, and on the preparation of the **accession report on Energy Efficiency and Related Environmental Aspects** (compliance with Art. 19 ECT and Protocol)³. The Secretariat will explore ways to pursue synergies in policies to improve energy access and energy efficiency as a tool to increase the services that can be provided by existing infrastructure, reducing energy costs, and avoiding the use of inefficient technologies and practices. Through the **Outreach** process the ECS will continue to work with countries interested to become Observers to the Energy Charter Conference by signing the International Energy Charter / European Energy Charter: based on their

³ Acceding countries have to ratify also the PEEREA Protocol.

interest, available external resources and the conclusions of the CONEXO policy review.

Ongoing

→ *Overall coordination* of contacts with acceding countries

ECS officer in charge: Deputy Secretary General, Senior Outreach Expert, Expansion Assistant

→ *Accession Reports* on compatibility of the domestic system with the ECT, to be discussed at the Strategy Group before approval by the conference

ECS officer in charge: Legal Counsel⁴

→ *Accession Reports* on Investment Climate and Exceptions to National Treatment, to be discussed at the Investment Group before approval by the conference

ECS officer in charge: Senior Investment Expert⁵

→ *Accession Reports* on Energy Efficiency and Related Environmental Aspects, to be discussed at PEEREA WG before approval by the conference.

ECS officer in charge: Senior Energy Efficiency Expert⁶

→ *Conference decision* approving above accession reports and inviting the country to accede to the ECT. *Conference decision* approving the signing of the 1991 or 2015 Charter for four countries in 2016, and inviting the country to proceed to accession to the ECT

ECS officer in charge: Expansion Assistant

- **Administrative, financial and legal issues**

12. Maintaining an **online database on disputes under Art. 26 ECT**, including information on **compliance** with awards granted. This will be based on minimum **transparency** provided on a voluntary basis by the Contracting Parties (notification of the existence of a claim –name of parties, institution and rules). The ECS will also provide **neutral, independent legal advice and assistance** in dispute resolution. This could result in an alternative source of financing for the Secretariat through fees for administration of investment mediations/good offices, acting as appointing authority for mediators, preparing neutral legal expert reports if requested by the arbitral tribunal, renting the facilities of the Secretariat for holding arbitration or mediation meetings.

Ongoing.

⁴ He will be seconded by an expert from the acceding country.

⁵ He will be seconded by an expert from the acceding country.

⁶ He will be seconded by an expert from the acceding country

→ *Legal support, advice and assistance in dispute resolution. Informative sessions to Members of the Conference and energy companies.*

ECS officer in charge: Legal Counsel

→ *Energy Charter Legal Forum in Stockholm (ICSID, SCC, PCA, ECS) in early 2016.*

ECS officer in charge: Legal Counsel

13. **Commentary of the ECT:** In 2016, the Secretariat expects to conclude the draft systematic legal commentary of the ECT (including the Trade Amendment), which will provide a coherent overview of the content of the Treaty and will analyse the provisions based on the negotiating history and the existing arbitration awards. It will raise awareness and knowledge of the Treaty.

Ongoing.

→ *Draft Commentary at the end of 2016 and Conference decision welcoming the Commentary in 2017.*

ECS officer in charge: Legal Counsel

14. **Standing responsibilities of Administrative, Financial and Legal Affairs** providing support to the Conference, its subsidiary bodies, the IAP and Secretariat on internal administrative issues.

Ongoing.

→ *Meeting documents* for all Energy Charter bodies and *internal administrative* documents for the Secretariat; as well as legal support for the Secretariat/Conference and information to Members of the conference (on issues regarding the ECT and Conference Decisions)

ECS officer in charge: Head Administration and Finance, Director, Legal Counsel, Experts

- **Knowledge Centre**

15. The Secretariat will continue with its current **capacity building activities** and **promoting awareness** targeting Contracting Parties/Signatories of the ECT and Expansion-target countries.

Ongoing.

→ *Capacity building* and raising awareness activities (including two training workshops in 2016, charter forums...). Administration of the web and social networks.

ECS officer in charge: Knowledge Centre Principal Coordinator and Knowledge Centre Coordinators

Part 2: Activities financed by Voluntary Contributions

Pursuant to Article 15(2)(c) of the Financial Rules of the Energy Charter Secretariat, “the Secretary General is authorised to accept, on the advice of the Budget Committee, or of the Chairman of the Budget Committee if the Committee will not be in session on a timely basis, any such other resources not exceeding BEF 2 000 000, or Euro 49.600 provided that it is for an activity included in an approved programme of work of the Secretariat.”

16. **Regional Energy Cooperation in Central and South Asia (RECA)**: The Secretariat will continue its work on promoting regional energy cooperation in Central and South Asia. This activity includes support to the meetings of the Task Force on Regional Energy Cooperation in Central and South Asia established in 2007. In 2016 the Secretariat will consider organising the 12th meeting of the Task Force in one of the countries of the region.

Ongoing.

→ *Meeting with the countries of the Task Force and Recommendations for Governments on Energy and Investment Policies,*

ECS officer in charge: NN

17. **Regional Energy Cooperation in South Caucasus**: Following the flagship initiative of the Georgian Chairmanship in 2015, the Secretariat will support regional electricity cooperation in the South Caucasus. The Secretariat will aim to establish a regional Task Force to promote further cooperation and market integration.

Ongoing.

→ *Meeting with countries of the region and Recommendations for Governments on Energy and Investment Policies,*

ECS officer in charge: NN

18. **Regional Energy Cooperation in Eastern European and Western Balkans countries**: Facilitate regional policy discussions on issues, related to energy security, sustainable energy development and energy markets. Support the elaboration and implementation of medium and long term energy policies and assist countries in implementing policy recommendations, following-up from recommendations of PEEREA and ICMS reports.

Within the EU action on Energy Policy in Eastern Partnership countries funded by European Neighbourhood Instrument working in cooperation with Energy Community Secretariat, the Secretariat will work with Armenia, Azerbaijan and Belarus, to help partner countries to implement policy recommendations stemming from country analyses and from regional policy discussions within the EU action as well as from country ICMS and PEEREA reports. The main areas of focus for these countries will cover energy efficiency, trade and transit, as well as the functioning of the internal markets and rules for attracting investment. Specific activities will be implemented based on agreed annual work programme with each country and will focus on the development of greater technical, institutional and administrative capacity building among officials in key energy related ministries and agencies, focussing on energy trade, energy transit, energy efficiency and renewable energy, in connection with best international practices. Assistance will be provided also to partner countries to prepare a list of strategic projects in energy infrastructure, that are particularly relevant at regional level and that could be integrated into national investment plans and presented for financing by other EU instruments, such as NIF. Ongoing.

→ *Meetings* with countries of the region and *implementation* of individual countries' assistance modules

ECS officer in charge: NN

19. Promoting Accession to Energy Charter Treaty in Africa: The Secretariat will continue supporting the accession of African countries to the Energy Charter Treaty by means of accepting seconded experts from accession countries to the Secretariat and organising training to enhance capacity building in matters related to the Energy Charter.

Ongoing.

→ *training and capacity building* for seconded experts, and *Recommendations for Governments on Energy and Investment Policies, ECT Accession,*

ECS officer in charge: NN

20. Promoting Accession to Energy Charter Treaty in South America: The Secretariat will continue developing relations with Latin American countries through specific workshops and studies related to Energy Charter matters.

Subject to CONEXO Review (October 2015)

→ *workshops and studies* related to Energy Charter matters, and *Recommendations for Governments on Energy and Investment Policies*

ECS officer in charge: NN

21. Promoting Accession to Energy Charter Treaty in the Mediterranean Region:

The Secretariat will continue to cooperate with Mediterranean countries, bilaterally as well as in the framework of the multilateral cooperation jointly with other organisations.

Ongoing.

→ *workshops and studies* related to any Energy Charter matters and *Recommendations for Governments on Energy and Investment Policies, ECT Accession,*

ECS officer in charge: NN

22. Promoting Accession to Energy Charter Treaty in the South Asian Association for Regional Cooperation (SAARC) Region:

The Secretariat will continue to raise interest in SAARC countries for the Energy Charter.

Ongoing.

→ *bilateral visits* and participation in workshops, and *Recommendations for Governments on Energy and Investment Policies, ECT Accession,*

ECS officer in charge: NN

23. Promoting Accession to Energy Charter Treaty in the ASEAN Region:

the Secretariat will continue cooperating with ASEAN countries, individually as well as with ASEAN and ASEAN Energy Centre. Focus will be on accepting seconded experts and demonstrating to prospective countries the potential relevance of the ECT, such as the development of reports on regional energy connectivity and investment promotion.

Subject to CONEXO Review (October 2015).

→ *training* for seconded experts and publications of reports and studies, and *Recommendations for Governments on Energy and Investment Policies, ECT Accession,*

ECS officer in charge: NN

24. Promoting Accession to Energy Charter Treaty in the North East Asian Region:

the Secretariat will continue cooperating with countries in North East Asia and China.

Ongoing.

→ *Studies and reports* on energy projects and policies in North East Asia including China, and *Recommendations for Governments on Regional Energy Cooperation, ECT Accession*

ECS officer in charge: NN

25. **Promoting access to energy** as referenced in the International Energy Charter.

Proposed by Art. 34(7) Review and by the International Energy Charter

→ *Experts workshop* to analyse possibilities for facilitating access to energy in less developed countries, investment protection and **transfer of technologies** related to improving energy access, cooperation within G20 format

ECS officer in charge: NN

26. **Ratification of the Trade Amendment and the possibility to move to a binding tariff standstill regime** consistent with developments taking place in the WTO. The Secretariat will also **enhance cooperation with the WTO** on trade issues. In cooperation with other relevant fora, international organisations, donors and IFIs, support identification and implementation of the policy recommendations stemming from country analysis and related policy discussions.

Ongoing

→ *Further Ratifications* of the Trade Amendment; *Conference decision* to move to a binding tariff standstill, *implementation* of trade policies

ECS officer in charge: NN

27. **Development of a clear and transparent system of notification of ‘Charter Efficiency Projects’** in order to provide investors the comfort and legal certainty that energy efficiency investments in a non-energy sector will be covered by Part III of the ECT.

Proposed by the Assessment of the PEEREA Review process

→ *Conference decision* approving the mechanism for notification.

ECS officer in charge: NN

28. **Energy Security of Island States.** Terms of Reference for an ad hoc Task Force on Energy Security in Island States have been approved by the Investment Group in 2015. The ad hoc Task Force will report to the Investment Group.

→ *Workshops* on energy security of island states

ECS officer in charge: NN

29. **Energy Charter contribution to the Sustainable Development Goals** – continue to cooperate with other international organisations and fora (UN, IEA, IRENA, SE4ALL, G20, UfM, OECD, OSCE, UNECE and others) in view of contributing to realise the Sustainable Development Goals and associated targets.
Ongoing.

→ *Joint events and activities*

ECS officer in charge: NN