



BRUSSELS INTERNATIONAL ENERGY CHARTER FORUM

MOBILISING INVESTMENTS FOR A SUSTAINABLE ENERGY FUTURE

On May 12, 2017, the Energy Charter Secretariat (ECS) hosted the International Energy Charter Forum in Brussels. The event was jointly organized with Florence School of Regulation (FSR), Arbitration Institute of the Stockholm Chamber of Commerce (SCC), International Center for Settlement of Investment Disputes (ICSID), and Permanent Court of Arbitration (PCA). Over 100 participants were in attendance, representing the industry, governments, legal circles, and academics. Most of them joined the local diplomatic community evening before, 11 May, for a reception to inaugurate the new premises of the International Energy Charter.



The forum aimed to deliver cutting-edge thinking and debate on policy, legal and regulatory aspects concerning the undergoing transition towards a sustainable energy model. From different and complementary angles, the five institutions co-organising the forum participate in the promotion and protection of energy investment and in the analysis and policy dialogue on energy markets.



The Forum was opened by **Dr Urban Rusnák, Secretary General of the International Energy Charter**, together with **Mr Nepes Byashimov, Deputy Chairman of Turkmengas**, on behalf of the Turkmenistan Chairmanship of the Energy Charter Conference; **Ms Annette Magnusson, Secretary General of the Arbitration Institute of the SCC**; **Prof Jean-Michel Glachant, Director of the FSR**; **Ms Frauke Nitschke, Team Leader/Legal counsel**; and **Mr Martin Doe, Senior Legal Counsel at the PCA**.

In his opening remarks, **Dr Rusnák** stressed that the energy sector is changing quickly and the Forum was a great opportunity to reflect about two key concepts governing the energy transition: market regulation and investment protection. Those challenges require institutional cooperation, such as the new partnership with the Florence School of Regulation and the long established collaboration with the Arbitration Institute of the Stockholm Chamber of Commerce, the Permanent Court of Arbitration and ICSID.

Mr Byashimov, underlined the strategic priority to ensure energy security through diversification of transport infrastructure. He further stressed that the Paris agreement is designed to pave the way for an environmentally sustainable future, but before it is necessary for all stakeholders to develop reliable and transparent procedures for attracting investments for the implementation of energy projects. The investment provisions of the ECT are currently one of the most effective mechanisms they can use to achieve that.

Prof Glachant, presented the huge transformation being experienced by the energy sector, the consequent internalisation of the FSR and the solid foundations of the International Energy Charter.

Ms Magnusson, Ms Nitschke and Mr Doe, presented the work of their respective institutions, well established as leading providers of investment arbitration services, as well as the relevance of the ECT. While the [new rules](#) of the SCC entered into force a couple of months ago with a number of noteworthy revisions and innovations, ICSID is preparing background papers on [topics](#) that have been identified for potential rule amendment.



Signing of the International Energy Charter by H.E. Sekou Goussou Cisse, Amb. of the **Republic of Mali** to Belgium and the EU



The Energy Charter Secretariat signed **Memoranda of Understanding** with the **University of Tehran** and with **ECOWAS Regional Electricity Regulatory Authority**



Ms Rachel Kyte, the CEO for the global initiative **Sustainable Energy for All (SE4All)** and **Special Representative for the UN Secretary-General in the SE4All**, delivered a keynote speech outlining a comprehensive vision, progress achieved and challenges ahead to provide universal access to modern energy services, doubling both the rate of energy efficiency improvements and the world's share of renewable energy. She concluded explaining the relevance of the International Energy Charter.



Mr Andris Piebalgs, Senior Fellow at the FSR and former EU Commissioner for Energy and for Development, chaired the first session devoted to the necessity of stable investment conditions to implement the Paris Agreement and the Sustainable Development Goals. He emphasised the role of the International Energy Charter to enhance the rule of law and a level playing field in the energy sector.

Mr Robert Tudorache, Secretary of State at the Ministry of Energy of Romania, the country that in 2018 will hold the Energy Charter Conference's Chairmanship, referred to the process of decarbonisation and the role to play by all low-carbon energy generation capacities in the energy mix, while pursuing also the objective of energy security.

Mr Davood Manzoor, Deputy President of the transmission system operator Tavanir and Head of the National Energy Committee at the Ministry of Energy of Iran, noted that developing the power sector, particularly with respect to exporting electricity, is one of Iran's energy policy priorities. Iran signed the International Energy Charter in 2015 and is fully committed with the Energy Charter Process.

Hon Christophe Bazivamo, Deputy Secretary of the East African Community (EAC), highlighted the region's endowment with high potential of energy resources, although most of the resources remain underdeveloped or untapped, with very low energy generation and energy access levels. The enormous opportunities for investment and business in the energy sector are underpinned by policy, legal and regulatory frameworks to support private sector participation. Consequently, EAC and its members have signed the International Energy Charter.

Mr Najim Elhadj Mohamed, Permanent Secretary of the G5 Sahel, stressed that the five member countries, and the organisation itself, are all signatories of the International Energy Charter. The G5 Sahel is an institutional framework for cooperation on security and development challenges, with a view to cooperating in a structured and permanent way. Regional priorities include to attract investment to achieve universal energy access according to the SDGs and to implement the Paris Agreement.

Mr Felice Zaccheo, Head of Unit Sustainable Energy and Climate Change, European Commission DG Development and Cooperation, pointed out that more than € 3.5 bn were allocated by the EU for 2014-2020 to support partner countries all over the world in achieving the sustainable energy objectives. EU Technical Assistance Facility was instrumental to start spreading the International Energy Charter in Africa.



Mr Ernesto Bonafé, Regulatory Expert and Expansion Coordinator at the Energy Charter Secretariat, chaired the second session on the Right to Regulate: Best practices in regulatory reform to attract investment and minimise investment disputes.

Mr Alberto Pototschnig, Director of the Agency for the Cooperation of Energy Regulators (ACER), stressed the need to regulate some activities in the energy that cannot be subject to free competition. The long-term nature of energy sector investments requires stable and time-consistent regulation.

Mr Honoré Bogler, Chairman of ECOWAS Regional Electricity Regulatory Authority (ERERA), focused on the benefits of regional regulation to increase confidence and the involvement of the private sector in the development of the electricity infrastructures.

Mr Emmanuel Opoku Awuku, General Counsel of the African, Caribbean and Pacific (ACP) Secretariat, pointed out that within Africa there are some good regulatory practices, both at national and regional level. Increased regional regulation, combined with regionalisation of regulatory bodies and agencies, could assist the countries of Africa in overcoming national limits in sourcing technical expertise and to enhance national capacity to make credible commitments to stable regulatory policy space. This will further minimise investment disputes.

Ms Aikaterini Florou, International Relations Officer at the European Commission DG Energy, illustrated the global and EU trends in sustainable energy investments. The three main goals of the EU clean energy policy are energy efficiency, providing a fair deal for consumers and achieving global leadership in renewables. The lessons learnt in the 2020 scheme have been translated into new proposals for the 2030 climate and energy framework.



The third session, moderated by Mr Fredrik Andersson, a Senior Partner of Mannheimer Swartling, addressed the hot issue of whether investment protection standards under the Energy Charter Treaty required clarification or modernisation.

After a general overview on current trends in international investment policy making by **Ms Elisabeth Tuerk, Chief of International Investment Agreements section at UNCTAD,** the panel focused on the ECT. **Ms Claudia Annacker, partner at Clearly Gottlieb Steen and Hamilton,** explained there are discrete issues that have so far given rise to inconsistent interpretations of Article 10 by ECT tribunals and that

there are provisions that, due their interaction with provisions outside of Part III or due to their specific wording, could give rise inconsistent interpretations or an interpretation not intended by the negotiating Parties. However, the fact remains that there are only a few examples of directly conflicting interpretations by ECT tribunals, although generally not prompted by language specific to Article 10 ECT.

Prof. Shotaro Hamamoto, from Kyoto University further elaborated on the relevance of non-disputing parties intervention and their interaction with tribunals for purposes of seeking interpretation of an international treaty. In turn, **Mr David Gaukrodger, Senior Legal Advisor of the Investment Division at the OECD**, spoke about the existing tools for treaty interpretation, namely by means of joint interpretations by states and interpretations by institutions. Finally, **Mr Martin Paporinskis, Reader at University College London**, warned to carefully distinguish between ‘interpretation’ and ‘application’ since most of the time, debates about consistency wrongly referred to both concepts without clear separation.

Just after the coffee break, **Ms Sukma Dwi Andrina, Communications Consultant to the Arbitration Institute of the SCC**, presented the [Stockholm Treaty Lab Prize](#).



The **fourth and last panel**, moderated by **Ms Frauke Nitschke, Team Leader/Legal counsel at ICSID**, focused on the works-in-progress in the realm of investment dispute settlement.

Mr Pedro Claros, an international investment and damages expert, provided an insight into settled principles and practices regarding calculation of damages as well as an overview of ongoing projects by various institutions promote consistency and rigor in the quantification of damages in international arbitration. He was followed by **Mr Mark Appel, Chairman of the Investor-State Task Force of the International Mediation Institute (IMI)**, who stressed the usefulness and benefits of investment mediation, as an emerging method of dispute resolution. He further explained the ongoing projects with the International Energy Charter and ICSID to promote and make more effective investment mediation.

The much discussed components of criticism of investor-state dispute resolution were addressed by **Mr Martin Doe, Senior Legal Counsel at the Permanent Court of Arbitration (PCA)**, arguing that there were recent mechanisms (as the Mauritius Convention) and ongoing projects to effectively address those concerns. Finally, **Ms Adinda Sinnaeve, Senior Expert of the European Commission (DG Trade)**, explained the current EU policy on investment dispute settlement in particular the proposal of the Investment Court System.

The Forum was closed by **Mr Alejandro Carballo Leyda, General Counsel and Head of the Conflict Resolution Centre of the International Energy Charter**.



Family photo of participants