

CHARTER NEWS

A newsletter from the Energy Charter



DIALOGUE WITH MOSCOW CONTINUES OVER ECT RATIFICATION

Dialogue with Russia is continuing over the question of its ratification of the Energy Charter Treaty (ECT), a major international agreement on energy cooperation signed by 51 states. Dr Ria Kemper, Secretary General of the Energy Charter Secretariat, visited Moscow from 17-21 September for talks with the Russian government, parliament and energy industries concerning ratification of the ECT, which provides a legal foundation for inter-governmental cooperation covering energy trade, investments, transit and energy efficiency. Russia signed the ECT in 1994, but remains one of only 6 of the Treaty's Signatory States that have yet to complete its ratification.



Dr Kemper addressing a Conference on "Exporting Caspian Oil & Gas" during her visit to Moscow

During her visit, Dr Kemper held meetings with "Gazprom" Chairman Aleksei Miller, senior representatives of RAO EES Rossii, the Russian Foreign Ministry, and the leadership of the Duma's Committee on Energy. She also took part in a round-table meeting for parliamentarians, government officials and energy industry representatives in the State Duma, devoted to discussion of the ECT and the implications of its ratification for Russia.

The visit represents a continuation of the Secretariat's dialogue with the Russian side over the ECT, following parliamentary hearings on ratification of

the Treaty which took place in the Duma in January, and which resulted in a decision to request further analysis of its provisions from the Russian government before a decision on ratification is considered. In particular, the January hearings revealed concerns within the Russian gas industry over the ECT's implications for the future of Russian gas exports to markets in western Europe. Dr Kemper believes these fears are misplaced, and is optimistic that progress is being made in addressing the Russian side's concerns, paving the way for ratification to be accomplished. "Russia has nothing to fear from ratification of the ECT – on the contrary, the Treaty could serve as a highly useful legal instrument for the promotion of Russia's own interests abroad", she noted.

Dr Kemper underlined also the importance attached by the EU to Russian ratification of the ECT. "This step is seen by the EU as highly desirable for the creation of a positive investment climate for European energy companies in Russia. Major emphasis has been placed on the need for ECT ratification during the EU's dialogue with Russia on a strategic energy partnership," she added.

WEST AFRICAN STATES STUDY THE ENERGY CHARTER

On 5 September Mr Amadou Diallo, Director for Transport, Communications and Energy, Executive Secretariat of the Economic Community of West African States (ECOWAS), visited the Energy Charter Secretariat for discussions on the Energy Charter Treaty and the obligations it contains. The visit, which took place at ECOWAS's request, was aimed at increasing the familiarity of ECOWAS and its 15 member states with the aims and origins of the Treaty and current developments within the Energy Charter process.

ECOWAS is considering the extent to which the Treaty might serve as a model for the creation of an inter-governmental legal framework for its member states in West Africa. This has become particularly topical following the creation in 2000 of the West Africa Power Pool (WAPP), the development of which has given rise to increased political focus on the creation of a positive climate for foreign direct investments in the power sectors of ECOWAS member states.

ENERGY CHARTER SECRETARIAT

Boulevard de la Woluwe, 56 • B -1200 Brussels, Belgium

Tel: +32-2-775.98.00 • Fax: +32-2-775.98.01 • E-Mail: Info@encharter.org
<http://www.encharter.org>

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TRANSIT TALKS EXTENDED TO CLARIFY KEY ISSUES

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Negotiations on an inter-governmental agreement designed to promote the security of energy transit, which were scheduled for completion in October, are set to continue beyond the envisaged deadline. This was announced by Henning Christophersen, Chairman of the Energy Charter Conference, following the Conference's latest meeting in Brussels on 11th October. The agreement, known as the Energy Charter Transit Protocol, aims to establish a new set of rules under international law for its Signatory states regarding flows of oil, gas and electricity crossing their territory in transit. Negotiations on the Protocol have been under way since early 2000.



According to Christophersen, many of the issues at stake in the negotiations have already been resolved. "Moreover, all our member states have reconfirmed their commitment to finalise the Protocol as soon as possible. However, we still need to find compromise solutions acceptable to all delegations on certain key issues. In doing so, it is vital that we ensure that the Transit Protocol remains a balanced document, reflecting the interests of consumer states, producers, and transit countries".

The aim of the Transit Protocol is to build on the existing transit-related provisions of the Energy Charter Treaty. In particular, the Protocol is designed to strengthen the obligation to prevent unlawful taking of energy in transit; establish criteria to be applied when offering available capacity for transit in pipeline and grid systems to interested third parties; clarify the terms on which transit tariffs are calculated; and ensure that the legitimate supply needs of transit states are taken into account.

Christophersen underlined the continued interest of the Charter's states in seeing the Protocol concluded. "There is a need to establish clearer rules or transit flows, in particular among the states of the former USSR – this is in the interest both of oil and gas producer states and of those countries through which such resources must pass in transit. At the same time, we are witnessing increased focus on the security of supply of Western Europe, inter alia through the creation of a legal basis for energy imports involving a "chain" of countries. In both cases, the Transit Protocol promises a substantial contribution to securing the objectives of our member governments".

EU AND RUSSIA DISCUSS ECT RATIFICATION



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"In the view of the European Union the Energy Charter Treaty constitutes an important legal and political framework for energy cooperation between energy producer, transit and consumer countries. For this reason the Union recommends that the few problems standing in the way of ratification of the Treaty and completion of the Transit Protocol be resolved."

From Joint Declaration adopted by Russian President Putin, EU Commission President Prodi, and European Council President Verhofstadt, at the EU-Russia Summit, Brussels, 3 October 2001

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INTERVIEW WITH ENERGY CHARTER INVESTMENT GROUP CHAIRMAN



Professor Argyrios Fatouros, Emeritus Professor of International Economic Law at the National University of Athens, was appointed as Chairman of the Charter's Investment Group in May 2001. He brings to this position a wealth of experience in senior positions, including at Ministerial level, within the Greek administration. He was actively involved in negotiations

on the Energy Charter Treaty in the early 1990s, and also served as Greece's Permanent Representative to the OECD from 1982-85.

Can you briefly explain the current priorities of the Energy Charter's Investment Group?

The Investment Group's activities can be broadly divided into three categories: firstly, monitoring implementation of the ECT's investment provisions, secondly, working towards a conclusion of the so-called Supplementary Treaty, and thirdly, promoting dialogue on restructuring and liberalizing domestic energy markets. In the first case, the "backbone" of our work is an ongoing series of country reviews, designed to assess the extent to which individual states are succeeding in bringing their domestic legislation into line with the ECT standards, including the principle of non-discrimination. But the Group also monitors implementation of the Treaty in other ways, such as through reviews of specific policy issues (e.g. remaining restrictions on land ownership). As a means of linking the Group's work to current developments, I hope to promote regular discussions in the Group on media reports concerning measures and policies of individual countries regarding foreign investments in energy. As regards the second item, the Group plays an important role in the continuation of discussions on a Supplementary Treaty to the ECT, which would extend in a legally-binding form the principle of non-discrimination towards foreign investors to the whole investment cycle, including the making of an investment. Finally, regarding the promotion of policy dialogue, the Group provides a forum where leading OECD states and countries with economies in transition can discuss the problems of establishing liberalized energy markets in order to learn from one another's experiences and de-

velop common recommendations. Various problems can be discussed, from structural or technical considerations in the creation of new institutions to issues such as non-payment for electricity and gas, which several of our eastern members had to address.

What plans do you have to develop the Group's activities in these areas?

Our country reviews will continue, but with an increasing emphasis on policy conclusions, going beyond an analysis of the conformity of national legislation with the ECT. In particular, I hope to stimulate discussion of recommendations to the country concerned over ways of improving the investment climate in its energy sector, and of removing obstacles to foreign investment. The Group is also considering more intensive "in-depth" reviews of the legal and administrative climate for energy investments in particular states - on a voluntary basis, of course. Another direction would be greater involvement of business in discussions in the Group, which could become a forum where governments and investors discuss problems and seek solutions. The Group will also continue work on Recommendations/Best Practice Guidelines for countries seeking to restructure their energy markets, taking account of work in other fora, such as the EBRD. Further developing relationships with such institutions would promote synergies.

And what are the prospects for the Supplementary Treaty's finalisation?

Negotiations are quite advanced, and a draft text came close to adoption in 1998. For a number of reasons, there was no consensus then, but completion of the Supplementary Treaty remains a key objective. Consultations have been under way continuously ever since, with a view to overcoming the remaining obstacles. Obviously, it would not do for me to try to prejudge the outcome, but there have been some encouraging signs, and we had a good discussion at the Group's last meeting. We may in fact be coming close to a successful conclusion and this would mark a major step forward in the Energy Charter effort to strengthen non-discriminatory treatment for foreign investment. But there is still some way to go before reaching our final goal in the matter.

INTERVIEW WITH ENERGY CHARTER TRADE GROUP CHAIRMAN



Steivan Defilla, an energy specialist by background, with particular expertise on electricity issues, is Senior Scientific Adviser on Industry, Environment and Energy policy in the Federal Economics Ministry of Switzerland. He was appointed as Chairman of the Charter's

Trade Group in May 2001.

What is the Energy Charter's role on energy trade issues, and how does the Trade Group of which you are Chairman contribute to fulfilling that role?

The ECT's primary aim is to regulate energy-related trade between its members according to the rules of the multilateral trading system, as embodied in the World Trade Organization (WTO). By applying and implementing these rules, the Charter facilitates the process of accession to the WTO by those signatory states that are not yet members of the WTO. As of today, 12 of the ECT's 51 Signatories are not WTO members. But under the ECT, the rules of the WTO are extended to these states' trade in energy materials and products and energy-related equipment with other ECT states. In this way, the Energy Charter acts as a kind of "stepping-stone" to full WTO membership. The work of the Trade Group is directed at monitoring individual signatories' compliance with the trade obligations of the ECT and also at capacity-building among the Charter's non-WTO members, providing advice and guidance as required in this context. In short, the Trade Group's activities are aimed at promoting the integration of all of the Energy Charter's member states into the international trading system.

How exactly does the Energy Charter assist such countries in the process of their WTO accession?

Mainly, by familiarizing them with the disciplines and requirements of WTO membership, and helping them to apply WTO rules in practice with specific regard to energy trade, in line with their obligations under the ECT. WTO membership entails not only the act of accession to the WTO, but also

a demonstrable readiness by the country concerned to observe full transparency over its trading practices in a range of specific areas (technical barriers to trade, state trading, import licensing, customs valuation, etc.), in accordance with the non-discrimination principle that is the cornerstone of the WTO. Through the Trade Group, our members acquire experience as to how this commitment is implemented in practice. This is achieved through the application, under the ECT, of a system of trade-related notifications modeled on WTO procedures. The Trade Group receives substantial input from the WTO itself in this respect. Training workshops with the participation of WTO Secretariat experts have been successfully held in the past for our members under the Group's auspices. I certainly hope that this cooperation with the WTO, which is financed by Swiss voluntary contributions, will continue under my Chairmanship of the Group.

Several of the Charter's member states are interested in increasing the scope for international trade in electricity. How is the Energy Charter addressing this issue?

I should underline that the ECT already covers electricity trade, and we are trying to increase transparency over how the Treaty's rules apply in this area. At the same time, it is true that some states wish to see the Energy Charter devote more attention to liberalization of cross-border electricity trade. In recognition of this, a study has been launched under the Charter's auspices on regional electricity markets, based on the experience that has been built up already among several groups of our member states. The aim is to draw conclusions as to the existing barriers to inter-regional electricity trade, and to discuss how liberalization in this area could be promoted. The Trade Group will continue to work on this over the coming year, and I hope that a consensus may emerge as to what further steps might be taken, in a multilateral context, to promote trade in electricity between states. It should be underlined, of course, that any such steps would need to take full account of the environmental and safety issues associated with inter-regional electricity trade within the Charter's area.