Foreword

I am very pleased as Secretary General to present this Annual Report of the Energy Charter Secretariat for 2011. I believe that this Report will provide the necessary information on the Energy Charter’s activities and facilitate communication with the constituency of the Charter, but also with the wider public who are interested in energy matters.

2011 was the last year of office of my predecessor as Secretary General, Amb. André Mernier. All the activities and results of 2011 are therefore to be credited to my predecessor. At the beginning of his term of office in 2006, Amb. Mernier stated that his priority as Secretary General would be to promote the authority and visibility of the Energy Charter. At the 2011 Energy Charter Conference it was clear that his work and efforts had been much appreciated by the Energy Charter constituency. Amb. Mernier was thanked for his commitment, relentless efforts and for the guidance he had given the Charter despite the many difficult events of his years of office. The Road Map for Modernisation was one of the significant achievements of those years. Amb. Mernier pursued the need to spread the message of the Charter. He promoted it as a binding legal framework which is required now more than ever in a globalised energy world.

In 2011 the Secretariat continued to work on promotion of the Charter, on Investment, Trade and Transit and Energy Efficiency. Discussions continued on the modernisation of the Energy Charter process. Members of the Charter process explored different approaches to the Transit Protocol with assistance from the Secretariat on these important issues. As a result, at the end of the year, the Conference tasked the Secretariat to assess the prospect of a reset of negotiations on the Transit Protocol.

I was honoured to be appointed as the Secretary General of the Energy Charter Secretariat by the Conference on 29 November 2011. I am very much committed to the principles and spirit of the Energy Charter Treaty. In these times of great economic and other difficulties, the need for international energy cooperation is more apparent than ever. I hope to be able to provide the required leadership to ensure that the Energy Charter Secretariat is an effective and dynamic organisation in pursuance of the aims of the Energy Charter Treaty. I am committed to ensuring that the Secretariat should play a full role in delivering on the benefits of the Treaty to all the Member States and to facilitate the required cooperation and essential dialogue. I will work with all Member States in pursuit of these aims.

I hope that the information in this Annual Report provides a satisfactory picture of the Treaty and of the Charter process. The instruments that the Charter provides are more relevant now than ever, as the effects of globalisation are being felt all the more strongly on the Eurasian continent. The Process relies on the political will of the constituency to make progress, and as always the joint efforts of member countries and the Secretariat are required.

Urban Rusnák
Secretary General
Energy Charter Secretariat

This work is published under the responsibility of the Secretary General of the Energy Charter Secretariat. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the organisation or of the governments of its member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.
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Frequently Asked Questions

Why an Energy Charter?

The Energy Charter is based on the recognition that all countries stand to benefit from a balanced framework for cooperation in the energy sector. Countries with natural resources get a means to attract investment, to protect their interests downstream, and to ensure reliable transportation for their energy exports to consumers.

Energy-importing countries get protection for their outward energy investments, and mechanisms to promote security of supply. All countries benefit from measures to encourage the efficiency of energy production and use and to minimise their environmental impacts.

The Energy Charter has two distinctive features. Firstly, the Treaty is the only body of international rules that is tailored to the specific needs of the energy sector. Secondly, the Energy Charter covers a broad and diverse range of countries across Eurasia, including energy producers, consumers and transit countries.

The Charter dates back to a political initiative launched in Europe in the early 1990s, at a time when the end of the Cold War offered an unprecedented opportunity to overcome the previous economic divisions in the region. A political declaration on international energy cooperation, the European Energy Charter was adopted in 1991, and was followed by the legally binding Energy Charter Treaty, which was signed in 1994 and which entered into force in 1998.

What Does the Treaty Do?

The Treaty’s common ‘rules of the game’ for the energy sector are designed to encourage investment and trade, to ensure reliable transit, and to promote efficient energy use.

A huge volume of investment is required all along the supply chain, in order to meet the growing demand for energy. The Energy Charter is based on the idea that international flows of investments, capital and technologies for the energy sector are mutually beneficial, and the primary aim of the Treaty is to promote the necessary climate of predictability that can attract private sector involvement.

The Treaty does not create investment opportunities for companies by forcing open access to resources or defining a certain market structure for Energy Charter member countries. These are sovereign decisions for member governments.

However, once an energy investment is made, the Treaty is designed to provide a stable interface between the foreign investor and the host government. This stability is particularly important in the global energy sector, where projects are highly strategic and capital-intensive, and where risks have to be assessed over the long-term.

It is a major task to reduce these risks, as far as possible, by creating a stable and transparent investment climate. The Energy Charter Treaty assists by offering binding protection for foreign energy investors against key non-commercial risks, such as discriminatory treatment, direct or indirect expropriation, or breach of individual investment contracts.

A second priority for the Treaty is to promote reliable international transit flows. This is a particularly important issue for Eurasian energy security, since a high proportion of oil and gas in Eurasia is delivered through long-distance pipelines that cross multiple national borders and jurisdictions.

Under the Treaty, member countries are under an obligation to facilitate energy transit in line with the principle of freedom of transit and not to interrupt or reduce established energy transit flows.

Thirdly, the Treaty requires that all member states act to minimise the harmful environmental impact of energy-related activities. The Treaty does not have binding targets in this area, but member countries use the Energy Charter as a forum to exchange information on programmes and policies that have been successful in improving energy efficiency.
Who Are the Members of the Energy Charter Treaty?

Fifty-one European and Asian countries have signed or acceded to the Energy Charter Treaty. All EU states are individual signatories, but the Treaty has also been signed collectively by the European Community (now part of the European Union) and Euratom, so the total number of parties to the Treaty is fifty-three.

Of these fifty-three, all have ratified the Treaty except for five. These countries are Australia, Belarus, Iceland, Norway, and the Russian Federation. Belarus and the Russian Federation have accepted provisional application of the Treaty, which meant that – pending ratification – they agreed to apply the Treaty to the extent that it was consistent with their own constitutions, laws and regulations. On 20 August 2009 the Russian Federation officially informed the Depository that it did not intend to become a Contracting Party to the Energy Charter Treaty. In accordance with ECT Article 45(3(a)), such notification resulted in Russia’s termination of its provisional application of the Treaty upon expiration of 60 calendar days from the date on which the notification was received by the Depository. Therefore, the last day of Russia’s provisional application of the Energy Charter Treaty was 18 October 2009. Belarus still applies the Treaty provisionally.

With its current membership, the Energy Charter has a natural focus on the evolving Eurasian energy market, including the Mediterranean region, the Middle East and North Africa. Although the Treaty was conceived as a European initiative with a focus on ‘East-West’ cooperation, the scope of the Energy Charter is now considerably broader. Pakistan, China, Korea, Iran and the Association of South-East Asian Nations have all taken on observer status in recent years; the role of the Energy Charter in Asia is becoming increasingly important.

How Does a Country Join the Charter Process?

The first step for a country wishing to join the Energy Charter is to sign the 1991 political declaration (the ‘European Energy Charter’). On the basis of this commitment to the principles of the Energy Charter, the country then becomes an observer to the Energy Charter, with access to all meetings and documents.

The next stage, if a country wishes to take it, is accession to the Treaty itself. This is a more lengthy process, since a country must first assess the compatibility of its domestic legislation with the provisions of the Treaty. Once the relevant reports have been approved by the Energy Charter Conference – the Energy Charter’s governing body in which all member countries are represented – the applicant country is invited to accede to the Treaty.

The Treaty is open for accession by any country that wishes to participate, that is ready to take on the obligations in the Treaty, and whose application is accepted by the Energy Charter Conference.

How Do Energy Charter Observers Participate in the Charter Process?

There are currently twenty four observers and ten international organisations with the status of observer to the Energy Charter.

Observers have the right to attend all meetings of the Energy Charter Conference and of its subsidiary groups. They also have the right to receive all related documentation, reports and analyses, and to participate in the working debates taking place within the Energy Charter.

The intention is that observer status should provide the chance for a country to familiarise itself with the Charter and its functions, in order to facilitate its assessment of the benefits of accession to the Energy Charter Treaty. In cases where there is a strong interest in a closer association with the Charter, energy experts appointed by observers assist in the work of the Secretariat as secondees or interns.

In 2004, the existing member countries made a detailed review of the functioning of the Charter Process, and drew the following conclusions with regard to its expansion:

“The Energy Charter Process has a natural focus on the evolving Eurasian energy market, including the Mediterranean, the Middle East and Asia. We welcome the interest shown in the Charter Process by several non-member states, and acknowledge in particular the growing Asian dimension of the Charter Process. Observer status at the Energy Charter Conference provides a mechanism for facilitating association and..."
**Frequently Asked Questions**

**familiarity with the Charter Process and we encourage the observer states to participate actively in the Charter’s work and to consider the mutual benefits of full accession to the Energy Charter Treaty.”**

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**Does the Treaty Oblige Countries to Provide Foreign Investors with Access to Their National Energy Resources?**

While the Energy Charter is based on the idea that international flows of investments and technologies in the energy sector are mutually beneficial, national sovereignty over energy resources is a core principle of the Treaty (ECT Article 18).

Each member country is free to decide whether and how its national energy resources are developed, and also the extent to which its energy sector is open to foreign investors.

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**Does Implementation of the Energy Charter Treaty Mean Mandatory Third-Party Access to Pipelines and Energy Networks?**

The Treaty includes an obligation on member countries to facilitate energy transit across their territory, in line with the principle of freedom of transit, and an obligation to secure established transit flows. At the same time, an Understanding included in the Treaty makes it clear that the Treaty provisions “do not oblige any Contracting Party to introduce mandatory third-party access”.

---

**Does the Energy Charter Treaty Require Unbundling/Privatisation of State-Owned Energy Assets?**

An objective of the Treaty is to promote transparency and efficiency in the operation of energy markets, but it is for governments to define the structure of their national energy sector. There is no obligation to privatisate state-owned energy companies, or to break up vertically integrated energy companies.

---

**Is the Treaty just about Oil and Gas? What about Renewable Sources of Energy?**

The Treaty covers all types of energy materials and products, inclusive of electricity and energy-related equipment, and the provisions on investment protection apply also to investments in hydropower, solar, wind energy, and all other renewable energy sources. For example, the first arbitration award made to an investor under the Energy Charter Treaty concerned the treatment of an investment – by a small company – in environmentally-friendly cogeneration of heat and power.

---

**If a Country Becomes a Member of the WTO, What Is the Added Benefit of Being Part of the Energy Charter?**

The Energy Charter shares core principles with the World Trade Organisation, in particular the principles of transparency and non-discrimination. The rules of the Treaty are fully compatible with those of the international trading system, and in practice the Energy Charter Treaty has been a valuable stepping stone for some member states on their way towards accession to the WTO.

However, the Energy Charter goes further than the WTO framework in addressing specific challenges for the energy sector. There is no counterpart in the WTO system to the Energy Charter Treaty’s provisions on the protection of Investment. The Charter also covers in more detail the issue of energy transit, and includes a distinctive mechanism for the resolution of energy transit disputes. In relation to the energy sector, memberships in the WTO and in the Energy Charter are complementary; these organisations are not substitutes for one another.

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**Is the Energy Charter an Institution of the European Union?**

The idea of an Energy Charter to promote international energy cooperation was launched by the (then) European Community in June 1990. All the member states of the enlarged EU are among the fifty-one signatories of the Energy Charter Treaty.

However, the Energy Charter is a separate international organisation, which aims to find balanced solutions to key energy challenges among a diverse range of member countries across Europe and Asia, including producers, consumers and transit states, participating in the Charter on an equal basis. And although the Charter Process was
originally conceived in Europe as a forum for East-West cooperation, the Asian dimension of the Charter Process has become an increasingly important priority in recent years.

What is the Difference between the Energy Charter Treaty and the Energy Community Treaty?

The Energy Charter is an independent international intergovernmental organisation, based on the 1994 Energy Charter Treaty, bringing together 51 states in Europe and Asia. The Energy Charter Treaty focuses on cross-border cooperation in the energy sector: promotion of investments, stable energy flows and increased energy efficiency.

The Energy Community is a European Union platform designed to extend EU’s internal energy market rules to interested non-EU countries in Europe. It involves the European Union and nine members in South-Eastern and Eastern Europe.

What Happens if a Country Does Not Comply with its Obligations under the Energy Charter Treaty?

The Treaty contains a variety of mechanisms to settle disputes, each of these being designed to address a particular aspect of the Treaty.

If a member country feels that another state is not complying with its obligations under the Treaty – and if no resolution is possible through bilateral diplomatic channels – then the matter can be taken to binding international arbitration. This mechanism is applicable to almost all disputes arising under the Treaty, with the exception of the articles on competition and on the environment.

The Treaty also grants individual foreign investors the right to take Energy Charter member countries to international arbitration, in the event of an alleged breach of the Treaty’s investment provisions.

The Treaty also includes a unique conciliation procedure to deal specifically with disputes over transit. This can be invoked by member states, and is faster and less formal than taking a case to arbitration. Under this procedure, an independent conciliator is appointed in order to assist the parties in reaching an agreement. If no agreement is reached quickly, then the conciliator ultimately has the power to fix interim transit tariffs for up to twelve months while negotiations between the parties continue. The aim of this procedure is to reduce the risk of interruptions to transit flows while an agreement is being found.

The Secretary General of the Energy Charter Secretariat has a role in appointing the conciliator in this case, but – apart from this specific instance – the Secretariat itself is not involved in the dispute settlement mechanisms. The Secretariat has no mandate to act as arbiter on disputes arising under the Treaty, nor can it recommend or take any sanctions against member countries.

How Can I Find Out More about an Individual Investment Dispute Raised under the Energy Charter Treaty?

The Secretariat has no formal role in relation to the settlement or administration of investment disputes under the Energy Charter Treaty, and parties to any dispute are not obliged to release information about the progress of individual cases. However, some information is in the public domain, and the Secretariat has compiled a list of cases containing – to the best of our knowledge – relevant public information about the investor-state disputes that have been formally initiated. This list is available on the Energy Charter website www.encharter.org.

What Does the Treaty Say about Provisional Application?

The Energy Charter Treaty provides in Article 45(1) that “Each signatory agrees to apply this Treaty provisionally pending its entry into force … to the extent that such provisional application is not inconsistent with its constitution, laws or regulations” (emphasis added).

Provisional application of the Treaty was a possibility only for countries that signed the Treaty when it was initially open for signature (from 17 December 1994 until 16 June 1995). At the time of signing, each state had the option of filing a declaration to the effect that it was unable to accept provisional application of the Treaty, and a number of countries filed such declarations. The Russian Federation and Belarus accepted provisional application.
Frequently Asked Questions

Since end-June 1995, any new member wishing to be bound by the Treaty has to accede; this is a different procedure that does not entail signing the Treaty itself, and so the question of provisional application does not arise in these cases.

As of 2011, five of the original signatory countries have not ratified the Treaty. Of these five, Norway, Iceland and Australia filed declarations at the time of signing to the effect that they were unable to accept provisional application. The Russian Federation and Belarus are the only two signatories which have not ratified the Treaty, and which have – by not filing declarations at the time of signature – accepted provisional application.

The status of Russia and Belarus in relation to the Energy Charter Treaty is open to a degree of interpretation, since the extent to which a state's acceptance of provisional application creates legal rights and obligations is – having regard in particular to the emphasised language above in Article 45(1) – not entirely clear under international law. Ultimately, this question can be settled authoritatively only in the context of relevant cases brought to international arbitration.

On 20 August 2009 the Russian Federation has officially informed the Depository that it did not intend to become a Contracting Party to the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects. In accordance with Article 45(3(a)) of the Energy Charter Treaty, such notification results in Russia's termination of its provisional application of the ECT and the PEEREA upon expiration of 60 calendar days from the date on which the notification is received by the Depository. Therefore, the last day of Russia's provisional application of the Energy Charter Treaty and the PEEREA was 18 October 2009.

Belarus continues to apply the ECT and the PEEREA provisionally.

What Is Russia’s Status with the Energy Charter?

Russia signed the Energy Charter Treaty in 1994 and has accepted provisional application of the Treaty pending ratification. This means that Russia has agreed to apply the provisions of the Energy Charter Treaty to the extent that they were consistent with Russia's constitution, laws and regulations.

The absence of ratification does not present an obstacle to the practical and technical work of the Energy Charter Process, in which Russia is an active participant. It does, however, leave ambiguity about the extent of Russia's legal rights and obligations under the Treaty.

On 20 August 2009 the Russian Federation has officially informed the Depository that it did not intend to become a Contracting Party to the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects. In accordance with Article 45(3(a)) of the Energy Charter Treaty, such notification results in Russia's termination of its provisional application of the ECT and the PEEREA upon expiration of 60 calendar days from the date on which the notification is received by the Depository. Therefore, the last day of Russia's provisional application of the Energy Charter Treaty and the PEEREA was 18 October 2009.

Albania, Armenia, Australia*, Austria, Azerbaijan, Belarus*, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, European Community (now part of the European Union) and Euratom, Finland, France, Georgia, Germany, Greece, Hungary, Iceland*, Ireland, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Mongolia, the Netherlands, Norway*, Poland, Portugal, Romania, Russian Federation*, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom, Uzbekistan

* – denotes state in which ratification of the Energy Charter Treaty is still pending

ˆ – the Russian Federation signed the Energy Charter Treaty and was applying it provisionally until 18 October 2009 inclusive

OBSERVERS TO THE ENERGY CHARTER CONFERENCE – signed the 1991 Energy Charter

Afghanistan, Canada, Indonesia, Jordan, Morocco, Pakistan, Serbia, Syria, United States of America

OBSERVERS TO THE ENERGY CHARTER CONFERENCE – by invitation of the Conference

Algeria, Bahrain, China, Egypt, Iran, Korea, Kuwait, Nigeria, Oman, Palestinian National Authority, Qatar, Saudi Arabia, Tunisia, United Arab Emirates, Venezuela

International Organisations with Observer Status:

ASEAN, BASREC, BSEC, CIS Electric Power Council, EBRD, IEA, OECD, UN-ECE, World Bank, WTO

The Energy Charter Secretariat also has signed in November 2007 a Letter of Understanding on Cooperative Activities with the Secretariat of the International Energy Forum

Constituency information as of the time of printing in 2012
Energy Charter Conference

The Energy Charter Conference is the governing and decision-making body for the Energy Charter Process. All states who have signed or acceded to the Energy Charter Treaty are members of the Conference, which meets on a regular basis to discuss issues affecting energy cooperation among the Treaty’s signatories, to review the implementation of the provisions of the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects, and to consider possible new instruments and joint activities within the Energy Charter framework.

Chairman: H.E. Selim Kuneralp, Ambassador and Head of the Turkish Permanent Delegation to the European Union
Conference Vice-Chairmen

Since November 2010, the Vice-Chairmen of the Energy Charter Conference are Mr. Anatoly Yanovskiy, Deputy Minister of Energy of the Russian Federation; and Mr. Odd Sverre Haraldsen, Director General at the Ministry of Petroleum and Energy of Norway.

Strategy Group

The Strategy Group serves as a forum for discussion on such issues as fostering the acceptance and implementation of the Energy Charter Treaty and the development of the entire Energy Charter Process, identifying ways to improve their effectiveness and examining possible options as to how the Energy Charter Process could be modernised.
Chairman: Mr. Odd Sverre Haraldsen (Norway)

Trade and Transit Group

The Trade and Transit Group is responsible for discussion of all issues related to cross-border energy flows that are covered by the Treaty. Its main tasks are:
- Monitoring and assistance in the implementation of the ECT and related instruments on trade and transit;
- Promoting and securing cross-border energy flows based on the Energy Charter Treaty;
- Facilitating the development of open, competitive and sustainable energy markets, and energy flows across the Charter constituency.
Chairman: Mr. Murat Ateş (Turkey)

Working Group on Energy Efficiency and Related Environmental Aspects

The Working Group on Energy Efficiency and Related Environmental Aspects is the institutional body in the Energy Charter Process for the discussion of all matters related to energy efficiency. The Working Group has developed into a valuable forum for policy debate and exchange of experience, and many of the transition economies have used this cooperative process to develop policies, legislation and other measures supporting improvements in energy efficiency.
Chairman: Dr. Victor Shakhin (Russian Federation)

Investment Group

The Investment Group is the institutional body for the discussion of all investment-related issues covered by the Treaty. Its main tasks are:
- Providing a policy forum for all investment-related matters under the Treaty;
- Preparing reports concerning the investment climate and the issue of market restructuring/privatisation;
- Exercising peer pressure with regard to the reduction of remaining energy investment restrictions;
- Giving recommendations to specific member states concerning their investment-related energy policies;
- Informing of recent developments in the investment-related energy policies of member countries.
Chairman: Dr. Michael Thomadakis (Greece)

Budget Committee
Chairman: Amb. Erik Ulfstedt (Finland)

Legal Advisory Committee
Chairman: Mr. Colin Brown (European Commission)

Industry Advisory Panel

The Industry Advisory Panel was set up by the Energy Charter Conference in 2004 as a means to build on existing contacts with industry, and to strengthen the dialogue with the private sector on the main directions of the Charter Process, with a particular focus on risk mitigation and improvement of the business climate. The Panel is intended as a consultative board to the Energy Charter Conference and to its various Groups, to provide advice on relevant issues related to energy investments, cross-border flows and energy efficiency.
Chairman: Mr. Howard Chase (BP Europe)
International Governance of Energy Trade:
WTO and the Energy Charter Treaty

Session organised by the Energy Charter Secretariat at the WTO Public Forum 2011


In his address, the Energy Charter Secretary General Amb. Mernier pointed to the unique role the Energy Charter Treaty plays as the only energy-specific multilateral agreement that covers all major aspects of international energy turnover: trade, transit, investment and energy efficiency. The ECT incorporates WTO rules with respect to energy trade and extends them to non-WTO countries that are members of the ECT.

Prof. Gabrielle Marceau, Counsellor in the Legal Affairs Division of the WTO, spoke on the application of the general WTO rules to trade in energy. He referred to the main goal of the WTO as being to prohibit protectionism. In the energy trade, export restrictions represent a more important concern than import barriers.

The discussion at the session was centred on the question of the most effective approach for dealing with energy trade regulation at a multilateral level – through special rules or general rules? Opinions were divided on this issue. Prof. Thomas Cottier presented a proposal on creating a framework agreement on energy within the WTO that could refer to pertinent provisions of other agreements outside the scope of the WTO, such as those of the Energy Charter Treaty.

There was a consensus that the principle challenges linked to energy trade are related to different interests between consuming and producing states. Prof. Peter Cameron of Dundee University highlighted the importance of the soft non-legal role of international organisations in setting common ground for dialogue. In his view, international organisations should contribute more to the debate on such issues as energy transit. Cooperation between the WTO and the ECT is sensible and desirable. The ECT provides a noticeable value added to the existing general WTO framework that covers a much larger constituency.

The session discussions focused on the key issue of the need for a balance between the interests of different stakeholders. A necessary condition for reaching such a balance, and an area where the Charter Process contributes, is the dialogue between different groups of players: consuming, producing and transit countries, at all stages of economic development. Amb. Mernier pointed to the particular role of the ECT – no other energy-related organisation provides a common platform for the development and implementation of binding rules among these different groups of stakeholders.
Strategy

The Strategy Group was established as a standing group by the Charter Conference in Rome in December 2009. In 2011 the Group continued to work on the tasks set out under its Terms of Reference. These are related to its role as a policy forum for members and observers, and to the promotion and modernisation of the ECT. They also relate to consultations over possible enhanced legal frameworks for energy cooperation, the development, and implementation of the Energy Charter’s policy on outreach, expansion and consolidation, the strategic development of the Secretariat’s Programme of Work and other issues.

The Strategy Group held three meetings in 2011, on 1 March, 7 June and 11 October.

Forum for Energy Dialogue

Delegations made active use of the Forum for Energy Dialogue, an established item on the agenda of the Strategy Group meetings to exchange information on important recent developments, such as national or multilateral energy strategies, developments with regard to the structure of domestic markets, and creation of new institutions dealing with energy issues.

In 2011, the European Union kept the Group informed on its work in the field of energy. The Hungarian and Polish Presidencies of the Council of the EU updated the meetings on their priorities. The EU provided a brief on the results of the European Council on 4 February 2011. Later in the year the European Commission presented its Communication on security of energy supply and international cooperation – “The EU Energy Policy: Engaging with Partners beyond our Borders” published on 7 September 2011, which had been drafted under a mandate received by the European Council. Delegations were also regularly informed by the EU and the Russian Federation of developments in their bilateral energy relations.

Germany informed the Group on a number of federal bills presented in relation to the planned shut down of nuclear power plants. Switzerland also discussed its decision to phase out nuclear energy. Kazakhstan notified the Group of the Eurasian Energy Forum on 4-5 October 2011 in Astana which had a focus on energy security in the Caspian region. The UK referred to the results of the Extraordinary IEF Ministerial Meeting on 22 February 2011 in Riyadh, Saudi-Arabia, and the development of the IEF Charter. France provided information on energy-related issues on 2011 agenda of the G20 held under the French Presidency. Japan shared its observations on high level meetings on energy in the framework of APEC and ASEAN+3.

The Secretariat informed the Group on its input to the discussions in other international organisations on energy security and international cooperation, in particular the OSCE.

Overall in 2011 the Strategy Group considered possible ways to further enhance the exchange of information. The Secretariat prepared a discussion paper with references to the Russian President Dmitry Medvedev’s “Conceptual Approach to the New Legal Framework for Energy Cooperation”. As a result of this discussion, the Secretariat drafted informal guidelines to encourage an active information exchange, including the opportunity to ask questions to other delegations through the Chairman and the Secretariat.

Following the “Arab spring” a special session of the Strategy Group was dedicated to evolving energy markets in North Africa and the Middle East and their potential integration with the European energy market. A representative of the government of Morocco made a presentation on the challenges for the country’s energy security and its policy for sustainable development. The Group also heard a first introduction into the Desertec project for renewable electricity generation in the deserts and its transmission to the centres of demand.

At the 21st meeting of the Energy Charter Conference, the delegation of the Russian Federation presented an outline of a document entitled “Convention on Ensuring International Energy Security” which had been prepared by Russian experts as a follow-up to President Medvedev’s “Conceptual Approach to the New Legal Framework for Energy Cooperation”. Delegations noted that the Convention seemed to address issues similar to those covered in the Energy Charter Treaty and stated their interest in addressing the proposal within the modernisation of the Energy Charter Process.

Shortly after the Conference met, the Secretariat received an official copy of the document from the Permanent Representative of the Russian Federation to the European Union. The discussion of the initiative fell under the Terms of Reference of the Strategy Group. For the first meeting of the Group in 2011, the Secretariat prepared a comparative analysis of the proposed text with the ECT and related instruments and a discussion paper outlining the different instruments available for addressing the substance of the Draft Convention. This was the basis on which delegations were asked how they wished to address the Russian proposal.

The Russian Federation explained that the “Draft Convention” did not represent a hard position of the Russian Federation but a document prepared by Russian experts to trigger discussions. The intention was to strengthen the effectiveness of international legal frameworks on energy, reflecting also the interests of producing states. As had been stated by the Russian President from the outset, two possible options remained; a new Treaty or an adapted ECT.

The European Union welcomed the discussion of the Russian proposals on the Charter’s modernisation process while expressing a preference for the Charter to be the exclusive forum to address the proposal. The EU argued that meaningful negotiations would require a form of understanding or guarantees from the Russian Federation that it would be ready to discuss and negotiate in this forum. Most of the issues included in the Russian proposal were already covered by the Energy Charter Treaty, whose legal standards the EU wishes to uphold. The EU indicated a number of elements from the “Draft Convention” that could possibly be discussed as part of the modernisation Road Map agreed in November 2010.

As a result, the discussion on the Russian proposal did not go beyond a preparatory stage. The Conference may decide whether it considers further work in this direction useful. Such work could be useful as an input into the modernisation of the Energy Charter Process. The Strategy Group would be the right place for such a discussion in view of its openness for members, observers and invited parties.
Prevention and Rectification of the Consequences of Major Accidents during Offshore Exploration, Extraction and Transportation of Oil

This topic had been mentioned as one of those elements from the Russian “Draft Convention” that delegations had been open to consider in the context of the Charter’s modernisation. The Secretariat informed the Group about a study undertaken on the subject of major accidents in the early years of the Energy Charter Process. As a result of the discussion that followed, the Secretariat was asked to keep following developments in this regard and to keep the Strategy Group informed.

Emergency Situations Affecting the Security of Energy Supply

In the Road Map for Modernisation the Conference gave a concrete mandate to strengthen the Charter’s role in responding to emergency situations in the energy sector. In 2011, the Strategy Group discussed the way forward in this regard.

From the Road Map three different approaches can be derived. First, a contribution by the Charter Conference in promoting the implementation of the ECT, early warning mechanisms and in preventing and settling disputes. Second, effective conciliation in the event of a dispute over any matter arising from Transit, as foreseen under ECT Article 7(7). Third, enhanced state-to-state arbitration (ECT Art. 27), e.g. on the basis of additional rules obliging them to support an accelerated process of state-to-state arbitration (fast-track arbitration) in cases of emergency.

Based on papers provided by the Secretariat, the Group discussed the different stages of disputes. These started with cooperation and prevention under normal operation of energy supplies through early warning of a possible problem that could have an impact on energy security, further on to mediation in view of a problem noted and then conciliation under ECT Art. 7(7), rapid response and fast-track arbitration. It was proposed that cooperation and prevention should usefully be addressed in the Trade and Transit Group in the context of the implementation of ECT Art. 7(1) and (2). Enhanced conciliation under ECT Art. 7(7) would also be an issue for the Trade and Transit Group. The Strategy Group would focus on fast-track arbitration with concrete proposals to be made in 2012 and a possible role of the Energy Charter in early warning, mediation and rapid response.
Activities Related to the Secretariat’s Programme of Work for 2012

In accordance with its Terms of Reference, the Strategy Group gives broad orientations on the Secretariat’s Programme of Work. A new practice was introduced in 2011 whereby a strategic document entitled “Main Policy Areas for the Secretariat’s Programme of Work” was discussed in the Strategy Group as a preparation for the drafting of the Detailed Activity Schedule, the 2012 Programme of Work adopted by the Conference at the end of the year. The “Main Policy Areas” were therefore discussed before the summer break, which allowed for a thorough preparation of the detailed Programme of Work by the Secretariat and its discussion in a designated ad hoc group. The titles of the Main Policy Areas were adapted to those in the Road Map for Modernisation.
Trade and Transit

The Trade and Transit Group convened three times in 2011: on 2-3 March, on 8-9 June and on 12 October. The discussions in the Group continued to address topical issues of energy trade and transit.


Draft Transit Protocol

According to the Terms of Reference, the Group for Trade and Transit was mandated to conduct formal negotiations on the remaining open issues of the draft Energy Charter Protocol on Transit, as decided at the 20th Meeting of the Energy Charter Conference on 9 December 2009.

Notwithstanding the fact that no negotiations were held in 2010, the Conference reconfirmed the mandate at the end of that year. In addition, it supported the proposal of the Group Chairman to carry out related work. These included; exploring constructive solutions to ensure compatibility between the legislation applicable within the European Union, its characteristics as a REIO and the Transit Protocol as a multilateral instrument, to consider the possibility to enlarge the constituency to include countries in North Africa and to allow delegations to raise other concerns.

When resuming its work on the draft Transit Protocol (TP) in early 2011, the TTG made the following basic considerations: First, the fact that there had been no negotiations in 2010 on the basis of the previously agreed text might signal a problem. Second, since the Russian Federation sent its letter on 20 August 2009 to the depository of the Energy Charter Treaty, there had been signals that Russia might wish to continue participating in the Energy Charter Process. At the same time, Russia had circulated a proposal for a “Draft Convention on Ensuring International Energy Security” which also contained provisions on transit. Third, on 3 March 2011 the EU’s third internal energy market package became effective, while the Energy Community Treaty had been enlarged to include Ukraine and Moldova.

While formal negotiations on the draft TP could not be held in this environment, the consideration of these circumstances triggered discussions in 2011 on possible ways to move forward with the document.

A comprehensive questionnaire-based consultation of all delegations was launched. Its purpose was, on the one hand, to collect positions on the draft provisions laid down in the previously agreed text and, on the other hand, to test possible ways to address the deeper rooted problems impeding the progress in negotiations of the outstanding issues. In particular, the Secretariat proposed to introduce different forms of flexibility to facilitate the adoption of a core agreement on transit. Technical flexibility was proposed to address the fact that some provisions might be of technical nature and subject to evolution and change. Regional flexibility was intended to strengthen the usefulness of the Protocol for concrete projects and energy corridors by providing the possibility for more detailed rules in sub-agreements. Country flexibility was proposed as a last resort to grant exceptions to individual countries unable to agree on a few specific provisions of the draft TP.

The consultation continued throughout the year. In addition to the discussions in the Group, a number of delegations asked the Secretariat to make their written responses available on the Energy Charter delegates’ website. A representative of the Energy Community Secretariat was invited to the meeting in October to explain the Energy Community’s transit regime. Four countries responded to the
questionnaire. In general, the written responses confirmed an interest by the respondents to conclude this instrument under the Energy Charter Treaty.

At the meeting of the TTG on 12 October 2011, the European Union presented the following common new position on the draft Transit Protocol:

1. “In view of the developments in the international energy situation, the developments in the Energy Charter constituency and, most notably, the lack of progress in the negotiations and consultations on the Transit protocol in recent years, it appears no longer opportune to continue the negotiations on a Transit Protocol on the current basis.

2. The EU is willing to consider a reset of the negotiations on the basis of a new document reflecting the common views of the constituency, if an important number of other stakeholders/contracting parties would express a genuine interest in such negotiations and a commitment to be bound by its result.

3. In this context, the EU recalls that this position does not affect its general consideration that it would be mutually beneficial if Russia would play a full role in the Energy Charter Treaty.”

The EU invited other parties to outline their positions as well and suggested to prepare an inventory of interest in a new document. A number of delegations commented that a lot of work had been invested into the draft Transit Protocol, much had been achieved and it would be unreasonable to restart on a blank sheet of paper. In their preliminary comments, some delegations stated that there was no doubt that transit remained a challenge.

Against this background, the Conference decided to repeal the negotiation mandate issued in December 2009). At the same time, the Conference tasked the Trade and Transit Group to conduct consultations among members and observers to assess the prospects of a possible reset of negotiations, including the issues to be addressed and the convergence of positions within the constituency in this regard.

Continuation of the Transparency Initiative

In 2011 the transparency initiative on new cross-border infrastructure projects had a strong focus on network development in the European Union, both for gas and for electricity. The report by Mr. Jean-Arnold Vinois, Head of Security of Supply & Networks at the European Commission on the EU Infrastructure Package was particularly relevant for delegations whose countries are involved in projects crossing the EU’s external borders. An interesting debate followed on how to attract investments into priority infrastructure projects and to secure financing and to enhance approval procedures. The EU’s Southern Gas Corridor and the role of internal market legislation were also addressed.

The TTG invited representatives of both new associations of Transmission System Operators established within the EU by the Third Energy Package. The presentations of ENTSO-E for electricity and ENTSO-G for gas focused on the development of Ten Year Network Development Plans (TYNDP), their methodology and results.
Implementation System under the Trade Amendment

In the trade area the activities of the Secretariat focused on the creation of the implementation system for the Trade Amendment. In 2011 this mainly consisted of (1) the review of the import and export duties regime of the countries within the ECT constituency; (2) discussion of the possibility to move from “best endeavour” to binding commitments with respect to import and export duties on items covered by Annexes EM I and EQ I of the ECT.

The Review of the Import and Export Duties Regime of the Countries within the ECT Constituency

In accordance with the Programme of Work the Secretariat conducted a review of changes in trade regime of ECT members, the purpose of which is twofold: (1) to comply with the transparency obligations under the Treaty; (2) to prepare the adoption of the binding tariffs regime with respect to products covered by the Energy Charter Treaty.

With regard to those Contracting Parties that are WTO Members, the Secretariat compiled the data on current tariffs applicable for all products and materials as well as equipment items listed in Annexes EM and EQ of the ECT respectively. The Secretariat requested delegations of those countries, for which no data had been made available over the recent period, to submit the respective information to the Secretariat. In total the information is now available for forty countries in the Energy Charter Treaty constituency.

Possibility to Move to the Binding Tariff Regime for Import and Export Customs Duties on Selected Items

The first priority in the ECT trade regime is the decision to move to bound tariff regime. For this a unanimous decision of the Conference is needed.

The Energy Charter Conference has had to conduct annual reviews on the possibility of moving items to a legally binding commitment under Understanding No. 3 to the Trade Amendment. When the issue of binding tariff regime was discussed last time in 2005, the Chairman of the Group on Trade and Transit suggested in his report to the Energy Charter Conference, based on consultations with delegations, that the issue of binding customs tariffs regime be taken up further after the Trade Amendment has entered into force.

Now, that the Trade Amendment is in force, the Group restarted the discussion of the possibility of moving items of Energy Materials and Products or Energy-Related Equipment from Annexes EM I or EQ I to Annexes EM II or EQ II. The Secretariat organised a meeting of Trade Experts 22 September 2011 in Geneva to address the issue.

At the Trade Experts meeting the delegations had an opportunity to discuss technical and legal modalities of a change from “best endeavour” regime to binding commitment. Although some delegations were ready to move forward on the issue, the majority of the delegations felt that the review of applied and, where relevant, binding customs duties and other charges in all ECT countries needs to be completed before any meaningful discussion could take place on what product items should be subject to binding tariff commitment. The Trade and Transit Group considered the outcome of the Trade Experts meeting at its autumn meeting. Based on that discussion the issue of binding customs tariffs regime will be taken up further in 2012.
Session of the Energy Charter Secretariat at the WTO Public Forum on ‘International Governance of Energy Trade: WTO and the ECT’

On 21 September the Energy Charter Secretariat organised a session entitled ‘International Governance of Energy Trade: WTO and the Energy Charter Treaty’ at the WTO Public Forum. The aim of the session was to discuss effective ways, from the regulatory perspective, to address challenges related to energy trade – taking into consideration the distinctive features of energy commodities. Another objective was to increase the visibility of the Energy Charter process within the WTO community.

In his address to the audience, the Secretary General of the Energy Charter Secretariat, Amb. Mernier, underlined the unique role the Energy Charter Treaty plays as the only energy-specific multilateral agreement that covers all major aspects of international energy turnover: trade, transit, investment, and energy efficiency. This session was very well attended by WTO delegations from both ECT members and observer countries.

Policies to Support Development of Wind Energy Market and Trade

In the context of technology transfer and technology cooperation, the Secretariat presented to the Group a report discussing the factors influencing the development of renewable energy technologies and respective markets as well as trade in such technologies. The report specifically focused on the wind technologies as the most mature of the renewable energy technologies developed in the ECT constituency. The report examined strategies for wind industry development, with a special focus on the policy mechanisms that have been used to promote the local wind manufacturing industry in the ECT member countries that are leaders on the global market.

The main objective of the report was to open a discussion between the ECT delegations on the relationship between the successful development of the low carbon technologies and the policy support mechanisms to either directly or indirectly promote such development. The goal is to foster exchange of experience in policy making between ECT members. The Group benefitted from presentations of and discussions with representatives of the European Wind Energy Association and The Secretariat (Renewable Energy Certifications) International.
Assessment of ECT Provisions with regard to Low-Carbon Investments

According to the Road Map for the Modernisation of the Energy Charter Process, the Investment Group “should, in cooperation with the Trade and Transit Group elaborate an assessment of the provisions of the ECT’s investment regime with regard to the subject of climate change and promotion of low-carbon investments.”

In 2011 the Secretariat presented its preparatory work for the Assessment to both the Trade and Transit Group and the Investment Group.

The Trade and Transit Group discussed a report that addressed trade-related aspects of promoting low-carbon energy sector. Based on initial discussions in the Investment and Trade and Transit Groups, the Secretariat elaborated the Terms of Reference for the Assessment discussed at the October meetings of the Investment and Trade and Transit Groups.

The Assessment conducted in 2012 will focus on review of the existing ECT provisions with regard to low-carbon investment, trade, and energy efficiency. The Assessment will include case-study analysis of effective policies in various ECT members that facilitate flow of low-carbon investments. The intermediate results of the Assessment will be presented to the Investment and Trade and Transit Groups for consideration. Furthermore, specific policy options will be developed (legally binding provisions, soft-law obligations, declaration, and possible new legal instruments aimed at complementing the effectiveness of the relevant Energy Charter Treaty (ECT) provisions).

Promoting and Securing Cross-Border Energy Flows

Electricity Cooperation

The 7th Meeting of the Task Force on Regional Energy Cooperation was held in Kyrgyzstan in June 2011. Since its establishment under the Bishkek Declaration in April 2007, the Task Force works as a neutral forum to discuss issues related to electricity transit and technical matters and standards. The meeting gathered 35 participants from the governments and national companies of Central and South Asian states. It gave an opportunity for the Energy Charter Process members and observers to share experiences and discuss the best practice examples in electricity sector with the Central Asian Regional Coordinative Dispatch Centre, the CIS Electric Power Council, the South Asian Association on Regional Cooperation (SAARC) Secretariat, and the SAARC Energy Centre and the representatives of the US government-funded project on Regional Energy Security, Efficiency and Trade (RESET) Programme in Central and South Asia.

As part of the core issues in promoting the Regional Electricity Cooperation, the issue of developing the methodology for electricity transit tariffs were underlined by the CIS Electric Power Council and the Central Asian Regional Coordinative Dispatch Centre. Based upon this discussion, the Secretariat proposes for 2012 to undertake a study analysing electricity interconnections and issues related to electricity transit and transit tariff methodologies in transition countries.

The Declaration of the meeting, agreed by the participating delegations, recommends working towards reaching a joint understanding on legal, regulatory, and technical frameworks for cross-border energy transit and trade and expresses the importance of rapid completion of the Transit Protocol negotiations. It further elaborates on electricity transit issues in the context of this region for sustainable and secure cross-border energy flow. Delegates proposed to alter the topics for future discussions and to vary the geographic scope of the Task Force in order
to enhance the possibilities for broader regional coverage for potential energy cooperation. The Delegations from the Central Asian economies also highlighted the importance of the accession of Afghanistan and Pakistan to the Energy Charter Treaty in facilitating implementation of new energy interconnections with Central Asia and in allowing the development of a coherent legal and technical regime using the Energy Charter principles. The Declaration proposes to hold the next meeting at ministerial level, if possible in Pakistan.

Electricity Model Agreements are frequently referred to and used during project negotiations, e.g. negotiations on the Central Asia South Asia 1000 Megawatt electricity transmission line project.

**Emergency Response: Options for Effective Conciliation under ECT Article 7(7)**

Within the different activities on emergency response carried out under Area C of the Road Map for the Modernisation of the Energy Charter Process, the Strategy Group asked the Trade and Transit Group to develop options for effective conciliation under ECT Art. 7(7). The Group came to the conclusion that in order to be effective in view of its objective to secure established flows of energy, the mechanism must be rapidly available, neutral, and oriented at immediate practical solutions. The proposal by the Secretariat to enhance the mechanism by text amendments to the Rules Concerning the Conduct of Conciliation of Transit Disputes adopted by the Conference in 1998 was supported by delegations.

**Development of Open, Competitive and Sustainable Energy Markets**

**Transit under the Extractive Industries Transparency Initiative (EITI)**

Following the public statement by the Energy Charter Conference of 24 November 2010 supporting the Extractive Industries Transparency Initiative (EITI), which expressed the Conference’s readiness to provide assistance and to make a contribution to consultations in elaborating specific approaches in case of extending EITI to energy transit area, the Trade and Transit Group received a delegation from the EITI International Secretariat and non-governmental organisations working with the Secretariat on the application of EITI standards for energy transit. The discussion focused on the role of transparency to improve the investment climate and sustainable development in transit countries. The discussion on transparency requirements has been linked with the draft Transit Protocol and its Art. 10(1) on tariffs. The Secretariat intends to work with EITI in 2012 on transparency standards for transit operations, provided the availability of resources under the Programme of Work.
Energy Efficiency

The Working Group on the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) is a unique forum in the international community, where experts from a wide diversity of countries can share their experience in the context of binding commitment to improve energy efficiency.

**PEEREA Review Process**

The core activity of the Working Group is the review process as the main tool to monitor and facilitate the implementation of PEEREA. A number of delegates have reconfirmed the importance of the review process to provide key bases for fostering the development of national energy efficiency legislation and action plans.

Two In-depth energy efficiency reviews (IDRs) were on the agenda of the Working Group in 2011.

### In-Depth Energy Efficiency Review of Georgia

The second IDR of Georgia was completed in August 2011, by a team of experts led by a representative of Norway and including representatives of Armenia and Estonia, supported by the Energy Charter Secretariat. This was the second IDR for Georgia, the first one being conducted in 2005.

Georgia’s macroeconomic performance and general progress in recent years has been strong. The country’s achievements are widely recognised and they range from improvements in the legal and regulatory framework for doing business, liberalisation of the customs regime, reduced corruption, simplification of the tax system and the completion of large-scale privatisation across different sectors of the economy.

The review team noted that Georgia is pursuing market-orientated policies to promote its economic development and where possible to better align its prospects for trade with neighbouring markets. The current emphasis in the energy sector is on the rehabilitation of the power system and the promotion of much-needed investment in new and existing electricity generation plant, transmission lines, the national grid, interconnections, and distribution infrastructure.

The review team appreciated Georgia’s commitment to reforms in the energy sector and welcomed the progress achieved in improving the reliability of power supplies. Current efforts in the reform of gas and electricity markets in line with principles of efficient pricing should be continued. Where concerns arise over the social impacts of increased pricing, consideration should be given to methods other than pricing to address the concern (such as fuel aid). However the team noted that the government policy does not reflect and recognise the ability of energy efficiency to significantly contribute to wider energy and environmental goals. The current level of reliance on voluntary activities of non-governmental actors and international donors in the implementation of energy efficiency programmes, despite the best efforts of those involved, appears to be sub-optimal.

The review team made recommendations to the government of Georgia to formalise and strengthen its approach to the making, delivery and review of energy efficiency policy and to set energy policy goals to respect the potential of energy efficiency and renewable energy. The team also recommended that the government should create an energy efficiency unit within the Ministry of Energy to lead the development of legislation and the implementation of the energy efficiency policies as well as to promote sustainable energy within the government.
**In-Depth Energy Efficiency Review of Bosnia and Herzegovina**

Bosnia and Herzegovina was the eighteenth country reviewed under the Energy Charter PEEREA. The review report was finalised in September 2011. The peer review team was led by the UK and comprised of officials from Sweden and Romania, supported by the Energy Charter Secretariat.

The review team noted that energy policy and its associated measures are evolving in Bosnia and Herzegovina against a complex political and economic background which presents ongoing challenges in maintaining the authority and viability of the state. Consequently, energy policy formulation and the creation of the enabling framework of laws, institutions and measures across two Entities and a District is complex and further complicated by issues of alignment and symmetry of powers.

The reform of the energy sector is ongoing in Bosnia and Herzegovina and the team noted that progress has been made in several areas, for example, in reducing commercial losses and rebalancing of tariffs to reduce subsidies. Success depends on political will and requires continuing efforts and effective leadership at all levels. The review team observed that energy efficiency is evidently a factor considered in relation to large capital investments such as the repowering of power stations. Useful progress in raising awareness through the demonstration of practical solutions at local and enterprise level has been made possible through the joint efforts of donors, international financial institutions and energy efficiency actors in Bosnia and Herzegovina at state, entity and municipal levels.

The review team made recommendations to the State Government and to Entity Governments to set energy policy respecting the potential of energy efficiency in all sectors of the economy. All legal, financial and other means necessary to reach those goals needs to be provided and the available international financing needs to be leveraged with domestic budget financing to best overall effect. Further, the team recommended that efforts should continue in the reform of energy markets in line with the principles of transparency, efficiency and cost-reflective energy pricing.

Development and enforcement of regulations governing the energy performance of buildings should be a priority for action by the Entity Governments in the light of the dominant share of energy demand of the sector and the great potential for improved performance and the economic benefits that follow. Both the State and the Entity Governments should continue to facilitate and, as far as is practical, ensure the ongoing involvement of all relevant stakeholders, including public sector bodies; business and industry associations; NGOs; and consumer representatives in the implementation of measures stemming from their energy efficiency policies.

**Regular Energy Efficiency Review of Kyrgyzstan**

The Ministry of Energy of Republic of Kyrgyzstan in cooperation with the Energy Charter Secretariat developed regular energy efficiency review report in 2011. The main areas of energy sector development of Kyrgyzstan were determined at the beginning of the 1990s when the country became independent. In 1998 the Law on Energy Conservation was adopted in order to promote energy efficiency in the generation, transmission and consumption of energy. However the law failed to produce sufficient improvement in the energy efficiency policy. Therefore in 2008 a new version of the Law was adopted that provides for specific procedures for development of energy conservation policy and ensures state control of its implementation. The Programme of Energy Conservation of the Republic of Kyrgyzstan for the period of 2009-2015 was drafted on the basis of the Law on Energy Conservation.
Energy Efficiency and the Role of Local Governments

The role of local governments in improving security of energy supply by enhancing energy efficiency, reducing their dependence on fossil fuels, and contributing to climate change mitigation in their respective areas was a topic of a panel discussion during the PEEREA Working Group meeting on 26 October 2011.

PEEREA reviews have shown that often problems occur in the implementation stage because of the decisional loop which exists between central and local authorities. This situation is most evident in those countries where the local administrative authorities are endorsed by central power and not elected locally by the citizens. While the local authorities are awaiting a national action plan for energy efficiency to enable them to act at local level, the central administration waits for the local suggestions on the energy efficiency measures in order to prepare a national plan. As a result no progress is achieved in energy efficiency policies and measures development and implementation. Delegates agreed that within the PEEREA framework municipalities should be encouraged to develop and implement sustainable energy policies and measures. This could be done by increasing the capacity of local authorities to analyse the needs on energy efficiency, to identify priorities and set achievable goals.

The EU initiative Covenant of Mayors was presented as a best practice example to involve local and regional authorities voluntarily committing to increasing energy efficiency and use of renewable energy sources on their territories. By their commitment, Covenant signatories aim to meet and exceed the European Union reduction objective of 20% CO₂ by 2020. Delegates noted the success of the initiative which currently involves over 3000 cities and agreed that the initiative should be further promoted as a good example and used as a tool to advance energy efficiency on local and regional scale between Energy Charter member states and observers.

Concrete practical activities are planned to support local authorities in countries in Eastern Europe and Central Asia and they will be implemented in close collaboration between the national decision makers and local governments as well as donor communities in participating countries. A project “Yes (Da) to the Covenant – DACO” has been prepared by the Energy Charter Secretariat in close cooperation with five partners from the Energy Charter constituency. In October 2011 the Projects Evaluation Committee under the Europe Aid call for proposals “Covenant of Mayors Going East decided to approve DACO for financing.

The main objective will be to support the local authorities in Azerbaijan (Sumgayit city), Belarus (Novogrudok city and region), Kazakhstan (Taraz city and Zhaembyl oblast) and Tajikistan (Somoniyon city and Rudaki district) to develop and implement Sustainable Energy Action

Covenant of Mayors
Committed to local sustainable energy
Energy Efficiency

Plans (SEAPs) within the Covenant of Mayors’ framework and to acquire a common methodology to correctly monitor, evaluate and reduce their energy consumptions and CO₂ emissions. Implementation of the DACO project will increase institutional and professional capacity of the local authorities to implement climate change-related energy policies and will enhance general public awareness on climate change issues. In order to demonstrate the potential of energy efficiency in the local communities’ pilot projects will be identified and implemented as part of the SEAPs. The direct engagement of the International financial institutions and national donors will be essential in order to ensure the practical shifting of SEAPs from analyses and design into implementation phase.

**PEEREA Working Group Round Tables and International Cooperation**

PEEREA Working Group delegates had acknowledged that the roundtable was a viable platform for them to share information on recent policy developments in their countries. Delegates had noted that the roundtable was extremely valuable for them in identifying good practice and understanding other national contexts.

In conclusion and based on all discussions held throughout the years, it should be emphasised that in countries of transition, energy efficiency policy could only be developed when all government institutions and stakeholders outside the energy sector are aware and understand that energy efficiency is the most cost-effective tool to improve security of supply and competitiveness, reduce emissions, make energy consumption more affordable for consumers as well as create employment. Investment in energy efficiency should be given a certain level of priority among actions taken to solve other urgent issues such as building transport infrastructure, development of agriculture, solving social issues, etc.

Delegates reiterated the importance of removing subsidies and introducing energy tariff reform to ensure financial sustainability of national energy operators and boosting investment in energy efficiency projects in all sectors.

The Working Group continued also to serve as a forum for networking and exchange of information with other international and national organisations active in the area of energy efficiency in particular the International Energy Agency, the United Nations Economic Commission for Europe, the Energy Community Secretariat, International Partnership on Energy Efficiency Cooperation, the International Confederation of Energy regulators. Relationships with the energy efficiency industry, energy utilities and relevant trade associations, were also strengthened in 2011, especially through their engagement in relevant PEEREA activities.
Under the supervision of the Energy Charter Conference, the Investment Group is the institutional body for the discussion of all investment-related issues covered by the Treaty.

The Investment Group convened on two occasions in 2011: on 5 April and on 25 October.

**Country Reviews of Investment Climate and Market Structure (ICMS)**

The majority of the Treaty’s investment-related provisions are self-implementing and are aimed at the creation of the appropriate investment climate. However, the Investment Group and the Energy Charter Conference maintain a constant political focus on investment climate issues, by providing regular assessments, through ICMS reviews, of investment practices among its participating states.

The ICMS reviews are undertaken on a peer review basis and serve the purpose of information sharing and cooperation among the member states. The reviews contain information on the development of the national economies, basic statistics on foreign direct investments, in-depth analyses of the legal framework and a review of the investment climate and market structure in the energy sector.

In 2011, Moldova, Azerbaijan and Poland underwent in-depth ICMS reviews of their energy sectors. All three reviews were prepared by the national authorities of above mentioned countries in close cooperation with the Energy Charter Secretariat. Ukraine and Romania acted as peer review countries for the report of Moldova. Italy and Kyrgyzstan acted as peer review countries for the report of Azerbaijan. Slovakia and Finland acted as peer review countries for the report of Poland.

The Investment Group welcomed the progress achieved by the countries reviewed concerning investment liberalisation and energy market restructuring. The Group appreciated, in particular:

- **With regard to Moldova:** steps to improve business climate and progress made in development of its energy sector legislation and market reforms aimed at establishment of open and competitive energy market and a level playing field for local and foreign investors;

- **With regard to Azerbaijan:** open door policy in the oil and gas sectors that has resulted in significant inflow of foreign direct investments. New and existing infrastructure pipelines for export of energy products are important to increase the security of energy supply from Azerbaijan to the neighbouring countries as well as global energy markets;

- **With regard to Poland:** the business climate has significantly improved and continued development of its energy sector legislation and market reforms were noted. Decisive actions to integrate with regional and global energy markets. As regards long term unconventional gas in Poland is expected to play a major role.

Having heard the report from the Investment Group, the Energy Charter Conference adopted detailed policy conclusions and recommendations with regard to the reviews at the 22nd meeting of the Energy Charter Conference on 29 November 2011.
Investment

Improving Entry Conditions for Foreign Investors

Foreign direct investment is an important source of capital for growth in many countries. It provides a package of new technologies, management techniques, finance and market access for the production of energy materials and related services; and thus contributes significantly to raising productivity in host countries in attaining their overall economic growth. The Energy Charter countries work towards promoting investment opportunities by adopting a proactive approach towards improving business climate for energy sector operations.

The fundamental objective of the Energy Charter Treaty’s provisions on investment issues is to ensure the creation of a “level playing field” for energy sector investments throughout the Charter’s constituency, with the aim of reducing to a minimum the non-commercial risks associated with energy-sector investments. In accordance with the ECT each contracting party endeavours to limit to the minimum the exceptions to the national treatment principle and progressively remove existing restrictions affecting Investors of other Contracting Parties.

The Investment Group continues work in the area of maintaining an updated registry of non-conforming measures to national treatment principle in the Blue Book of the Energy Charter. In 2011, significant progress was detected in the legislative frameworks in a number of ECT countries resulting in adoption of reasonable steps towards liberalisation and enhanced transparency in the energy markets.

Review of the Expropriation Concept in the ECT Constituency

The ECT is a multilateral legal framework which contains provisions related to the promotion and protection of energy investments. Within the framework of the ECT implementation in selected areas, the Investment Group addressed a highly significant concept in this field – expropriation. Expropriation was examined through the prism of the Energy Charter Treaty while taking into consideration other international agreements, such as bilateral investment treaties, to which ECT member countries are party.

As part of a policy dialogue, the Group undertook an in-depth analysis on a specific issue of expropriation. The review analysed the national laws of selected member countries related to direct expropriation. The review also analysed arbitral cases relevant to in-direct expropriation cases by illustrating how arbitral tribunals interpret governmental actions, which have impacts on foreign investments.

The delegations exchanged experiences and discussed key issues in assessing a country’s expropriation laws. Such issues included: clarity and transparency of expropriation laws and modalities in terms of their ability to provide timely, adequate and effective compensation, their consistency with international norms and examining whether independent channels exist to review or contest expropriation decisions.

The work of the Investment Group on expropriation was aimed at enhancing investment protection through transparency and predictability related to legislation on expropriation. Analysis and follow up discussions on expropriation cases brought to arbitral tribunals allowed to gain useful insights and experiences with the process and principles of the international law.
**Model Investment Agreement**

In 2010, the delegations to the Task Force on Promoting Regional Energy Cooperation in Central and South Asia expressed support for the development of Model Investment Agreement (MIA) for investing in energy sectors, based on the principles of the Energy Charter.

The background to the MIA is that the high cost of developing comprehensive and customised legal and financial documentation can be a critical barrier to the implementation of energy projects. Like other model agreements developed by the Secretariat, the proposed MIA can assist project developers and other project stakeholders to reduce the time and costs associated with developing legal and financial documentation for their projects. The information and links provided will also help raise private and public stakeholder awareness and capacity regarding the legal aspects of energy projects.

In 2011, the Investment Group exchanged some ideas and had preliminary discussions about the proposed MIA. It was agreed that this work shall be carried out in the future provided there is continued interest from the member states.

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**Industry Advisory Panel**

The Energy Charter attaches great importance to its relationship with the energy industry. The Industry Advisory Panel (IAP) is the recommended platform for such dialogue. On the one hand, the IAP gives to the Charter constituency an invaluable insight into the workings of the very sector for which it is setting international rules; on the other, it gives the energy business the possibility to provide direct feedback on the initiatives and policies of the Energy Charter.

The Panel has established itself as a notable forum for analysing energy market and policy trends, areas of possible concern, positive developments and identifying new emerging challenges facing the Energy Charter. The Energy Charter constituency benefits from the vast experience and high level of expertise of energy companies, associations, and other international organisations through the presentations made during the Panel's meetings, site visits organised by IAP members and the Panel's annual Communications to the Energy Charter Conference.

In 2011 the IAP continued to focus its activities on the policies required to secure adequate, timely and affordable energy supplies on a national, regional and global basis. Since its inception in late 2004, the IAP has held twenty meetings, mainly in Brussels at the premises of the Secretariat. However, over the last three years meetings were also organised in Baku, Athens, Milan, Amman, Stavanger and Prague, at the invitation of Panel members and other interested parties. The meetings outside Brussels have provided outstanding opportunities to engage with industry operators and to understand and comment on important regional energy perspectives.

The Industry Advisory Panel held three meetings in 2011. A meeting in Prague at the invitation of CEZ provided valuable insights into the Czech Republic's energy and industry policy, including the use of coal, hydro and nuclear power for electricity generation. The second meeting of the year was held in Brussels. Finally, the State Oil Company of Azerbaijan (SOCAR) hosted a meeting of the IAP in Baku for the second time. This meeting largely addressed issues related to natural gas exploration, production and transportation from the Caspian region.
Global Energy Outlook

The fastest growing source of energy to 2030 is expected to be renewables, including bio-energy. Nevertheless, the remaining global resources of oil, gas and coal are sufficient to meet demand for decades ahead. Even if the cost of supply increases due to the development of unconventional oil and gas and challenging greenfield projects, the high energy density and relative ease of transportation of hydrocarbon fuels will ensure that they remain competitive in the market place well into the future.

Gas Market Developments

Overall, gas demand is expected to increase in Europe due to uncertainties over the future of the nuclear sector and to the environmental advantages of gas use in power generation. At the same time, domestic gas reserves are diminishing and more gas imports will be needed into the EU. The industry generally believes that the set renewable targets will be difficult and expensive to reach, and greater use of natural gas may be both desirable and necessary to sustain reliable, lower-carbon energy supplies. In particular, natural gas may be needed to cover the inherent intermittency of renewables.

Caspian Sea Gas Development

The Caspian Sea has substantial resources of natural gas that may be available for European and other export markets. Azerbaijan occupies an important position by virtue of its natural resources base, geographic position and successful history of partnership with international companies.

Negotiations between Turkey and Azerbaijan on gas sales and transit were recently concluded and prepare the way for onwards transmission of Azerbaijan’s natural gas to Europe. Azerbaijan may also become a transit country for the energy resources of Central Asian countries to reach world markets. From an EU perspective, Russia is and will remain a key energy partner. At the same time, the EU is looking for further gas supply route and source diversification. The EU consequently supports the concept of a fourth energy corridor (southern corridor) for increased gas transmission to Europe.

Role of the Energy Charter Treaty

As the internationalisation of energy continues to develop in all areas, the importance of a sound legal framework for International investment and transit continues to grow. Based on the experience of all of its members, the Industry Advisory Panel continues to strongly support the Charter Process and the ECT principles in the international energy practice. From an industry perspective, the value and importance of the Charter framework for the protection of investment and the provision of secure energy transportation and transit, remains clear and undisputed.

More information on the Panel’s activities is provided in a dedicated publication, *IAP Insights*, available on the Energy Charter website.
Legal Affairs

- Provision of legal advice to the Conference and the Secretariat on the interpretation and application of the Energy Charter Treaty, and internal and administrative matters;

- Relations with the Depository;

- Custody and organisation of the Energy Charter Treaty travaux préparatoires, including the archiving system:
  - The Legal Affairs unit ensures that access to the Energy Charter Treaty travaux préparatoires is allowed in accordance with the Secretariat’s policy.

- Responding to enquiries concerning the application and implementation of the Energy Charter Treaty:
  - The Legal Affairs unit answers questions from third parties regarding the application and implementation of the ECT, provided that such answers do not constitute legal advice.

- Updating the list of disputes brought under ECT Article 26:
  - The Legal Affairs unit maintains and updates a list of investor-state arbitration cases filed under Article 26 of the Energy Charter Treaty;
  - The Legal Affairs unit revised the page of the Energy Charter website where information is provided on investor-state arbitration cases filed under ECT Article 26.

- Development of Terms of Reference for a Model Investment Agreement:
  - The General Counsel prepared a background paper for the project of developing an Energy Charter Model Investment Agreement.

- Conference on Investment Arbitration:
  - Once every two years, the Energy Charter Secretariat, together with the International Centre for Settlement of Investment Disputes (ICSID) and the Stockholm Chamber of Commerce, organises a conference where experts present and discuss various issues relating to investment arbitration under the ECT. The Legal Affairs unit takes the leading role in preparing this conference and subsequent editing of a book based on the proceedings of this conference.
  - The latest one of these bi-annual conferences was held in June 2011 in Stockholm. The conference topic was “10 Years of Energy Charter Arbitration”. Also in 2011, a book was published based on the 2009 conference, entitled “Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty”.

Meetings Held in 2011

1 March 2011  Strategy Group of the Energy Charter
2-3 March 2011  Trade and Transit Group
5 April 2011  Investment Group
6 April 2011  PEEREA Working Group
12 April 2011  Industry Advisory Panel (Prague, Czech Republic)
7 June 2011  Strategy Group of the Energy Charter
8 June 2011  Budget Committee
8-9 June 2011  Trade and Transit Group
9-10 June 2011  Conference: 10 Years of Energy Charter Arbitration – the Energy Charter Secretariat co-organised this event in Stockholm, Sweden, with the Stockholm Chamber of Commerce and ICSID. This conference was the fourth in what has become a bi-annual series: the first one took place in Stockholm in 2005, followed by conferences in Washington D.C. in 2007 and in Brussels in 2009.
15 June 2011  Industry Advisory Panel
23 June 2011  7th Meeting of the Task Force on Regional Energy Cooperation in Central and Southern Asia – The Task Force met in Issyk Kul, Kyrgyzstan, to assess the work undertaken since the establishment of the group in 2007. Another objective was to discuss future activities of the Task Force and to intensify and develop cross-border energy cooperation.
19 September 2011  Budget Committee
22 September 2011  Trade Experts Meeting (Geneva, Switzerland)
28 September 2011  Industry Advisory Panel (Baku, Azerbaijan)
11 October 2011  Strategy Group of the Energy Charter
11 October 2011  Ad Hoc Meeting – Presentations by Candidates for the Position of the ECS Secretary General
12 October 2011  Trade and Transit Group
25 October 2011  Investment Group
26 October 2011  PEEREA Working Group
29 November 2011  22nd Meeting of the Energy Charter Conference (Sofia, Bulgaria)
Publications Released in 2011

Mongolia: In-depth Energy Efficiency Review

An in-depth review of energy efficiency policies of Mongolia was carried out in 2010. In fulfilling its commitments under the PEEREA, initially Mongolia has presented a regular review of its energy efficiency policies in 2003. The current in-depth review is the first for the country.

Follow-up Review of the Investment Climate and Market Structure in the Energy Sector of Bulgaria

This report is the second one for Bulgaria. It reflects the changes that have taken place in the country after its accession to the European Union. As such, the document covers mainly the period of 2004-2008 and is based on the latest publicly available data for Bulgaria.

Putting a Price on Energy: Oil Pricing Update

This report is a follow-up to the Secretariat’s 2007 publication “Putting a Price on Energy: International Pricing Mechanisms for Oil and Gas.” It provides an update of Chapter 3 on Oil Pricing. In particular, it looks at some of the key events which shaped the world economy over the past four years and which have led to a never seen before oil price peak and subsequent collapse.

Follow-up Review of the Investment Climate and Market Structure in the Energy Sector of Bosnia and Herzegovina

This report is the second one for Bosnia and Herzegovina. Its preparation was motivated by the need to reflect all relevant changes that have taken place in the country’s energy sector since 2002. The document covers mainly the period of 2002-2009 and is based on the latest publicly available data for Bosnia and Herzegovina.

Regular Review of Energy Efficiency Policies of Kyrgyzstan

Kyrgyzstan’s strategy for developing its energy sector is focused on hydro. Less than 10% of the country’s hydropower potential is utilised today. Overall, Kyrgyzstan’s domestic energy resources cover approximately half of its total energy demand, dependence on energy imports is very high. This Regular Review was prepared by the authorities of Kyrgyzstan.
IAP Insights 2011

IAP Insights is an annual publication, which summarises the Industry Advisory Panel’s activities throughout the course of the year.

Model Agreements for Cross-Border Electricity Projects

Electricity Model Agreements consist of an Intergovernmental Electricity Model Agreement for state-to-state agreements and a Host Government Electricity Model Agreement for agreements between an individual state and project investors.

Market and System Inter-Operability Agreement Guidelines for Cross-Border Electricity Projects

Electricity Model Agreement Guidelines deal with the operational issues specific to cross-border electricity projects. The Guidelines were developed with the help of consultants and with the valuable assistance of the Legal Advisory Task Force.

Follow-up In-depth Review of the Investment Climate and Market Structure in the Energy Sector of Azerbaijan

This in-depth report was prepared by the authorities of Azerbaijan in close cooperation with the Energy Charter Secretariat. It provides the most recent information on the country’s legal framework for establishing foreign businesses in its energy sector.

In-Depth Review of the Investment Climate and Market Structure in the Energy Sector of Moldova

This in-depth report was prepared by the authorities of Moldova in close cooperation with the Energy Charter Secretariat. It provides the most recent information on the country’s legal framework for establishing foreign businesses in its energy sector.

In-Depth Review of the Investment Climate and Market Structure in the Energy Sector of Poland

This in-depth report was prepared by the authorities of Poland in close cooperation with the Energy Charter Secretariat. The report mainly covers the period 2005-2011 and provides the most recent information on the country’s legal framework for establishing foreign businesses in its energy sector.
Energy Charter Secretariat

The work of the Energy Charter Conference and its subsidiary groups is supported by a small multinational Secretariat, based in Brussels. The staff of the Secretariat is drawn from across the Energy Charter constituency, and it is led by a Secretary General appointed by the Conference. The Secretariat’s activities are included in an annual Work Programme, which is subject to approval by the Energy Charter Conference.

Further Information


The Secretariat also publishes an electronic newsletter with details of Energy Charter meetings, activities and developments. If you are interested in receiving this newsletter, please subscribe by visiting the Charter’s website.

You may also follow the information on Energy Charter activities on Facebook at www.facebook.com/EnergyCharter.

For any other queries, please contact the Secretariat at the address below, or send an email to info@encharter.org.

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