

**ENERGY CHARTER
SECRETARIAT**

CCDEC 2015

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Brussels, 26 November 2015

Related documents: CC 545, Mess 1259/15
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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Approval by Written Procedure of the Comprehensive review and update of the Blue Book and directions to the Secretariat for the implementation of Article 10(5) of the Energy Charter Treaty

By document CC 545, dated 6 November 2015, delegations were invited to adopt the comprehensive review and update of the Blue Book and the directions to the Secretariat for the implementation of Article 10(5) of the Energy Charter Treaty as agreed by the Investment Group. As specified by Rule 20 of the Rules of Procedure concerning the adoption of decisions by correspondence, members of the Energy Charter Conference were informed that any delegation that wished to object to this proposal should notify the Secretariat of its position in writing by 26 November 2015.

Having received no objections within the specified time limit, the Conference **approved** on 26 November 2015 the comprehensive review and update of the Blue Book, as well as the directions to the Secretariat for the implementation of Article 10(5) of the Energy Charter Treaty.

Keywords: Review, Blue Book, Directions, Implementation, Article 10(5)

**COMPREHENSIVE REVIEW
AND UPDATE OF THE BLUE BOOK
AND DIRECTIONS TO THE SECRETARIAT
FOR THE IMPLEMENTATION OF ARTICLE 10(5) OF THE ECT**

Comprehensive review and update of the Blue Book

1. In 2014, the Secretariat launched the comprehensive review of the Blue Book by circulating a questionnaire (IN 117 Rev.1) requesting the signatories to report on any existing exceptions at pre-investment and post-investment phases.
2. The purpose of the comprehensive review is to identify existing measures non-conforming with the principle of national treatment and MFN treatment; to limit these measures to the minimum; and to progressively remove existing them in accordance with Article 10(5) of the Energy Charter Treaty.
3. From 12 February 2014 till 11 October 2014 the Secretariat received responses from Albania, Armenia, Tajikistan, Sweden, Lithuania and France. These response were summarised and disseminated in document IN 126 Rev 1.
4. From 12 October 2014 till 27 May 2015, the Secretariat received responses from Czech Republic, Germany, Switzerland, Latvia, Poland and Norway. These responses were summarised and disseminated in document IN 136.
5. From 28 May 2015 till 20 October 2015, the Secretariat received responses from Azerbaijan, Cyprus and Japan. The full text of the notified exceptions is provided in the IN 144 Rev 1.
6. In total, 24 countries that have responded to the questionnaire and have updated their exceptions and 68 countries that have not yet responded the questionnaire to update their exceptions. 11 countries did not yet responded the questionnaire and did never notified any exception.
7. The review showed that there is still an important number of barriers in the pre-establishment phase of investment in the energy sector.
8. The Conference welcomes the update of the Blue Book as a means to implement a voluntary initiative of transparency in relation to the establishment of energy investments in the spirit of Art. 10(5) of the Energy Charter Treaty.

Supplementary Treaty

9. Independently from the conclusions of the comprehensive review of the Blue Book, there is an actual interest in eliminating discriminatory measures in the establishment of energy investments.

10. Several African, Latin-American and Asian countries have signed the International Energy Charter, which contains important political commitments regarding the promotion of the international flow of investments and removal of barriers to investment in the energy sector. Improved conditions for the establishment of energy investments would be vital to meet growing energy needs and to ensure access to energy among an enlarged Energy Charter constituency.
11. Article 10.4 of the Energy Charter Treaty requests Contracting Parties to negotiate a 'Supplementary Treaty' with the objective to extend the principle of non-discrimination in a legally binding form to the 'Making of Investment'. Between 1995 and 2002 the Contracting Parties negotiated a complete draft text which was put on hold until certain outstanding issues have become clearer.
12. The UN Conference on Trade and Development (UNCTAD) registered a rise in the number of agreements that grant to investors rights in relation to the acquisition and the establishment of investments since 2010.
13. The Energy Charter Industry Advisory Panel (IAP) confirmed in 2014 the relevance to ensure non-discrimination in the establishment of energy investments by means of a legally binding instrument.
14. Therefore the Secretariat should analyse and prepare the ground on the conditions to negotiate a new legal instrument providing the non-discriminatory treatment in the establishment of investments. The analysis of a new legal instrument should not be limited to the draft Supplementary Treaty and should identify its added value (e.g. less obvious and more complex non-discriminatory barriers specific to the establishment of energy investments).