

**ENERGY CHARTER
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Related documents: CC 529, Mess 1257/15
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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Approval of the Conclusions and recommendations from the assessment of the ICMS country reviews

By document CC 529, dated 6 November 2015, delegations were invited to approve the Conclusions and recommendations from the assessment of the ICMS country reviews 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 Conclusions and recommendations from the assessment of the ICMS country reviews.

Keywords: Conclusions, Assessment, ICSMS, Reviews, Recommendations

CONCLUSIONS AND RECOMMENDATIONS FROM THE ASSESSMENT OF THE ICMS COUNTRY REVIEWS

Conclusions of the assessment of the ICMS country reviews

1. An overall assessment of the ICMS country reviews is conclusive as to the absolute necessity to maintain the preparation of these reviews on a regular basis. ICMS country reviews provide for a much needed comprehensive presentation of the existing legal framework for foreign investment in the energy sector. They promote energy investment both through an exhaustive presentation of the energy market and by the identification of potential investment opportunities.
2. ICMS country reviews are an important tool for ensuring transparency. They warrant the maintenance of a database on existing exceptions to the non-discrimination principle in the pre-establishment stage (“Blue Book”). They also provide information to Contracting Parties on recent substantial changes in the reviewed country’s legal framework. The preparation of an ICMS country review, in particular during the peer-review stage, provides for an appropriate forum for dialogue between Contracting Parties and for an opportunity for sharing best practices. Performing ICMS country reviews on observer countries promotes ECT membership and facilitates accession processes.
3. In the broader context of other similar reviewing tools in other international organisations, the ICMS country reviews benefit from a clear comparative advantage on four levels. First, they cover a large array of countries, including some that have not undergone any other similar reviewing processes. Second, among other country reports on investment climate, they are the only ones specifically focused on the energy sector. Thirdly, and conversely, among other country reports in the energy sector, they are the only ones to include a comprehensive analysis of the reviewed country’s legal framework for investment. Finally, their in-depth guarantees a level of precision absent elsewhere.
4. However, in light of identified additional goals that are to be achieved, this tool is in need of upgrading and improvement. Some suggestions for improvement are proposed with regard to the objectives of the ICMS country reviews, the process of preparation, their content and structure

Objectives of the ICMS reports

5. The ICMS country reviews pursue three core groups of objectives. First, they ensure transparency and information to members and investors, essentially by enumerating exceptions to non-discrimination in the pre-establishment phase and presenting an analysis of the reviewed country’s legal framework for foreign investments. Second, they promote energy investment through a comprehensive description of the energy market structure and identification and promotion of specific investment opportunities. Finally, they also ensure the effective implementation of the Energy Charter Treaty. The relevance of these initial objectives is not questioned.

6. However, in light of the changing conditions of the energy market and in line with the International Energy Charter signatories' expressed intention to modernise the Energy Charter, a set of additional objectives needs to be taken into consideration. These concern the dissemination of the technical assistance provided by the Secretariat, in terms of legal and policy analysis and policy recommendations, and of dialogue between with the industry. Furthermore, ICMS country reviews are essential for the promotion of accession by observer and outreach countries to the Energy Charter Treaty. The ICMS country reviews should also serve as an important tool for enhanced cooperation with international organisations and financial institutions.

Process of preparing the ICMS reports

7. The process currently utilised for the preparation of the ICMS country reviews needs improvement on several levels. First, in relation to the targeted countries, the recent practice of performing ICMS reviews on observer countries should be welcomed. However, clear and transparent criteria need to be established for the selection of targeted countries.
8. Secondly, the initial stage of the ICMS process, currently consisting of the establishment of initial contact between the reviewed country's authorities and the Secretariat, would benefit from a more detailed organisation.
9. Thirdly, the drafting stage of the ICMS process, currently consisting in the preparation of the report by a secondee from the reviewed country in close collaboration with the ECS, could be improved by an enhanced involvement of other actors: industry stakeholders, international organisations and independent experts.
10. Moreover, peer-review, currently provided by two Contracting Parties, could be enhanced by the inclusion of other actors: representatives of the industry and external experts.
11. Finally, a follow-up phase should be established, consisting in a periodical monitoring and in an implementation report . If the follow-up report concludes as to difficulties in the implementation of the policy recommendations, the Secretariat should intensify its role of policy advisor and facilitator of capacity building.

Contents and structure of the ICMS reports

12. The contents of the ICMS country reviews could be enriched by reference to the actual implementation of the legal framework and of investment disputes, including their outcome and their consequences. presentation of the ICMS report could also benefit from the inclusion of case studies on particular investment projects.
13. An essential part of the ICMS country reviews, the Policy Conclusions and Recommendations adopted by the Energy Charter Conference could be further detailed, notably providing for specific legal initiatives to be implemented by the reviewed country. Ideally, they could design a roadmap and a timetable, which could both serve as benchmarks for self assessment and facilitate follow-up. These suggested improvements are to be integrated into a renewed model Table of Contents.

Recommendations of the Investment Group

14. The overall assessment of the ICMS country reviews is conclusive as to the absolute necessity to maintain their preparation on a regular basis. However, the target countries, process, content and structure of the country reviews need improvement. The Investment Group will prepare the guidelines for the ICMS country reviews taking into account the conclusions of the assessment.
15. In order to further implement the core objective of promoting economic progress and social development by means of open and competitive energy investment and trade, as restated in the International Energy Charter, it is suggested that the Secretariat intensify its collaboration with the Contracting Parties on the launch of new publications.
16. In particular, it is suggested to complement the existing ICMS country reviews with a flagship publication covering horizontally the energy investment climate of Contracting Parties, observers and outreach countries. Such a periodic (annual) report would consist of a comparative analysis of the investment climate, directed to the industry as well as to governments.
17. A cursory study of similar annual publications in other international organisations illustrates the lack of focus in existing country reviews on the relation between the assessment of the investment climate and of the political risk on one side and investment finance, investment insurance and investment decisions on the other side.
18. An Energy Charter flagship publication on energy investment risk assessment would combine a comparative analysis of the investment climate in (thus supplementing the more in-depth study provided by existing ICMS country reviews) and a ranking system based on carefully drafted indicators.
19. The methodology (comparative analysis and ranking indicators) for this Energy Charter flagship publication would need to be developed in close consultation with international partners, the Investment Group and the Industry Advisory Panel (IAP).
20. The flagship publication could contain policy recommendations on reducing and eliminating investment risks at national and regional levels and enhancing regional and global cooperation. In this vein, it may be suggested to include country-specific analysis, studies on regional energy market and investment projects.
21. In line with the need to develop cooperation with regional and international organisations, the Energy Charter flagship publication should complement existing project such as the World Bank project entitled Readiness for Investment in Sustainable Energy (RISE) providing investment climate indicators across the three focus areas of the UN Sustainable Energy for All (SE4ALL) initiative (energy access, energy efficiency and renewable energy).