

**ENERGY CHARTER  
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| Related documents: CC 539 |
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**DECISION OF THE ENERGY CHARTER CONFERENCE**

**Subject: Report by the Chairman of the Investment Group**

The Energy Charter Conference at its 26th Meeting held on 3 December 2015 **took note** of the Report by the Chairman of the Investment Group as contained in document CC 539 (attached hereto).

Keywords: Report, Chairman, Investment Group

### **Report by the Chairman of the Investment Group**

1. This report provides an overview of the activities of the Investment Group in 2015. The Investment Group met three times in Brussels: on 21 April, on 11 June and on 23 October. The first and third meeting was chaired by Mr. Parviz Garibzade (Azerbaijan), the second meeting was chaired by Vice-Chair Dr. Klara Rakhmetova (Kazakhstan).
2. The implementation of the Energy Charter Treaty provisions on investment promotion and protection was again a high priority for the Energy Charter Conference in 2015, according to the 2014 Astana Declaration.
3. The Investment Group as the institutional body assisting the Conference provided a policy forum for all investment-related matters and in particular on: investment country reports, investment dispute settlement, and discriminatory barriers to investments. In addition, five thematic reports and one occasional paper in the field of investment promotion and protection were published during the year (*Annex*). A short summary with conclusions and recommendations of the addressed topics is presented below.

### **Energy Charter In-Depth Investment Climate Markets Structure (ICMS) Country Reports**

4. The Investment Group carried out a comprehensive assessment of the content, process, objectives and targets of the in-depth Investment Climate and Market Structure (ICMS) country reviews based on interviews with delegates and with the industry and comparing with similar investments reports carried out by other international organisations (APEC, IEA, IRENA, UNCTAD, OECD, World Bank, ADB, WTO, African Union, IMF, FSB UNECE). The conclusion was that the objectives, the scope and the geographical coverage of the Energy Charter energy investment country reports are unique and should therefore be continued on a regular basis and improved (**IN 145**).
5. The Energy Charter ICMS review into the energy sector of Latvia was completed with the support of the Ministry of Economics of Latvia and the peer review of Denmark and Kazakhstan after a field mission to Latvia in February. The publication of the report was launched by the Secretary General in Riga in June under the Latvian Presidency of the Council of the European Union (EU) at the First Innovative Enterprise Week focused on promotion of investments at various levels. Among Contracting Parties of the Energy Charter Treaty, Latvia has a favourable and strategic location for investments straddling the EU and its eastern neighbours, and is well positioned to benefit from multilateral and regional energy cooperation to increase its energy security.
6. The Energy Charter ICMS review into the energy sector of Armenia (completed in 2014) was presented in Yerevan in July by the Secretariat and the Ministry of Energy and Natural Resources of the Republic of Armenia with the peer review of Albania and Lithuania. The potential of Armenia in the electricity sector could be further facilitated by improved interconnections with countries in the region.

7. Together with the Ministry of Energy and Water Resources of the Republic of Tajikistan, the Secretariat prepared an Energy Charter ICMS review into the energy sector which is currently in its final stages. The field mission in March and the report were carried out together and in coordination with UNCTAD Investment Policy Review. Tajikistan is making big steps towards improving the business climate and will further prioritise the development of the energy sector, which may include the management of state utilities and transmission system operators as well as stabilising conditions for independent producers.
8. In collaboration with the Ministry of Energy, Commerce, Industry and Tourism of the Republic of Cyprus and with the peer review of Norway, a draft ICMS review in the energy sector of Cyprus was prepared and presented to the Investment Group
9. In addition, the Secretariat proposed the completion of the Energy Charter energy investment country reviews with a flagship publication on Energy Charter Investment Risk Assessment (EnChIRA). EnChIRA should present a comparative analysis of investment risks in the pre- and post-investment phase across all energy sectors in contracting parties, observer and outreach countries. By comparing country investment risk profiles, the publication aims at disseminating transparent information, promoting investment opportunities, identifying barriers to investment, enhancing the domestic investment climate, stimulating regional cooperation. The publication of EnChIRA could build upon the experience of the Energy Charter investment country reviews and complement the World Bank annual publication Readiness for Investment in Sustainable Energy (RISE).

### **Investment Dispute Settlement**

10. In the field of investment dispute settlement, the Investment Group had extensive discussions on possible measures to improve investment dispute settlement under the Energy Charter Treaty. The Group was supported by a group of external experts (ICSID, UNCITRAL, PCA, SCC and ICC) led by the International Mediation Institute (IMI) who volunteered for the preparation of the draft on investment mediation and the role of the Secretariat, which is subject to further work (**IN 141**). The Secretariat provided further clarifications on the implementation of the denial of benefit clause under Art. 17 ECT (**IN 130**).
11. The Secretariat regularly raised awareness on investment disputes under the ECT with updated statistics, comparative analysis between the ECT and the network of bilateral investment treaties, and is currently collecting the summaries of the published awards. In addition, UNCITRAL presented to the Investment Group its activities on the Mauritius Convention on Transparency and on concurrent proceedings in investment arbitration. UNCTAD presented its activities on the transformation of international investment agreements and on the investment policy framework for sustainable development (IPFSD).

### **Discriminatory Barriers to Investment**

12. The Investment Group continued monitoring exceptions (i.e. discriminatory measures adopted by Contracting Parties with respect to the establishment of investments) in a comprehensive review of the Blue Book launched in 2014 (**IN 117 Rev.**). Based on the large number of existing exceptions, the possibility of resuming the negotiations of the Supplementary Treaty

was raised. (Article 10 (4) of the ECT makes Contracting Parties legally bound to negotiate the Supplementary Treaty) or of an alternative multilateral instrument (IN 138).

### **Investment in Outreach**

13. The activities of the Investment Group were enriched by the contributions of secondees, research fellows and trainees with specific experience in the energy sector in outreach countries. Among the topics that were addressed: development of shale gas in Colombia, electricity sector in Nigeria, energy investment climate in China, and energy investment climate in Niger.

### ***Annex***

#### **Investment thematic reports and occasional papers in the field of energy investment promotion and protection published in 2015**

In the field of investment promotion and protection, the Secretariat published the following reports and occasional papers:

*“Securing Energy Flows from Central Asia to China and The Relevance of the Energy Charter Treaty for China”* by Mr Zhuwei Wang

*“The Role of the Energy Charter Treaty in Fostering Regional Electricity Market Integration: Lessons Learnt from the EU and Implications for Northeast Asia”* by Dr. Ernesto Bonafé and Mrs Aurore Vanhay

*“Towards Secure and Sustainable Energy Supply in Central Asia: Electricity Market Reform and Investment Protection”* by Dr. Anatole Boute

*“Taxation of Foreign Investments under International Law: Article 21 of the Energy Charter Treaty in Context”* by Dr Uğur Erman Özgür

*“Non-Pecuniary Remedies under the Energy Charter Treaty”* by Dr Anna de Luca

*“The Energy Sector of Niger: Perspectives and Opportunities”* by Eng. Mr. Salifou Gado