

**ENERGY CHARTER  
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Related documents: CC 583, CC 584, CC 573
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**DECISION OF THE ENERGY CHARTER CONFERENCE**

**Subject: Reports by the Chairs of the Groups on Investment, Trade and Transit and Energy efficiency**

The Energy Charter Conference at its 27th Meeting held on 25 November 2016 **took note** of the Reports by the Chairs of the Groups on Investment, Trade and Transit and Energy efficiency as set out in documents CC 583, 584 and 573.

Keywords: Reports, Chair, Trade and Transit, Investment, Energy Efficiency

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

1. This report provides an overview of the activities of the Investment Group in 2016. The Investment Group met two times in Brussels: on 12 May, and 20 September. The first and second meeting were chaired by Mr Vice-Chair Tomas Pavlik (Czech Republic) and Mrs Miriama Kiselyova (Slovakia) respectively, both in absence of the Chair Mr. Parviz Garibzade (Azerbaijan).
2. In line with the considerations concluded from the Energy Charter Conference in 2015 and according to the Astana Declaration, the Investment Group meetings in 2016 were relevant to the implementation of the Energy Charter Treaty provisions on investment promotion and protection.
3. The Investment Group, being the institutional body assisting the Conference, provided a policy forum for all investment-related matters including revision of ICMS guidelines, potential modernisation of the investment dispute settlement mechanisms under the Energy Charter Treaty, the investment country reports, the flagship Energy Charter publication on energy investment risk assessment, and the removal of discriminatory barriers to energy investments.

### **Revision of ICMS guidelines**

4. After the comprehensive assessment of the ICMS as carried out in 2015, it was concluded that the Secretariat should continue preparing ICMS country reviews and that the Investment Group should prepare revised guidelines for the preparation of the ICMS country reviews taking into account the main findings of the comprehensive assessment, especially the need to enlarge the objectives, the scope and the geographical coverage of ICMS reports.
5. As requested by Investment Group, the Secretariat prepared revised ICMS guidelines which provide detailed directions for the preparations and for the follow up stage of future ICMS country reviews. The new guidelines also identify target countries and describe the process of the preparations of the country reviews and define shared responsibilities between target countries, the Secretariat, and other partners.
6. The Investment Group endorsed new ICMS guidelines (IN 148 Rev) which replaced the previous guidelines set in 2001 (IN 9). The future ICMS reports will be drafted on the basis of the revised guidelines.

### **Guide on Investment Mediation**

7. Following the discussions held in 2015 and after final consultation with the external group of experts, the Investment Group discussed a revised version of the Draft Guide on Investment Mediation (IN 147 Rev. 2) and draft Conference decision endorsing the document.
8. The Guide on Investment Mediation was designed to (i) explain the mediation process in general, (ii) facilitate tips and (iii) explain the role of the Energy Charter Secretariat and other institutions. The aim was to have an explanatory document that

could be voluntarily used by governments and companies to take the decision on whether to go for mediation and how to prepare for it.

9. The Investment Group welcomed and restated the usefulness of the revised version of the Guide on Investment Mediation and decided to submit the draft to the Conference for decision by written procedure and it was adopted on 19 July 2016.
10. By endorsing the Guide on Investment Mediation, the Energy Charter Conference encourages Contracting Parties to consider to use mediation on voluntary basis as one of the options at any stage of the dispute to facilitate its amicable solution and to consider the good offices of the Energy Charter Secretariat.

### **Energy Charter Flagship Publication on Energy Investment Risk Assessment**

11. In 2016, Investment Group thoroughly discussed the concept of an Energy Charter flagship publications on energy investment risk assessment and the pilot project on Colombia, Mauritania and Ukraine.
12. The flagship publication was intended to strengthen the objective of the International Energy Charter to create a climate favourable to the operation of enterprises and to the flow of investments and technologies. The ultimate goal would be to (i) contribute to sustainable energy development, (ii) improve energy security and (iii) maximise the efficiency of production, conversion, transport distribution and use of energy, (iv) enhance safety in a manner which would be socially acceptable, economically viable, and environmentally sound.
13. The Investment Group agreed that the proposed flagship publication is an unexploited niche for publication which should provide target countries with an assessment of key areas of their energy investment climate which can be improved. The Investment Group stressed that the publication should not duplicate ICMS reports or other publications issued by other international organisations.
14. The Investment Group supported the project and also invited the Secretariat to start its preparation.
15. The Secretariat prepared the preliminary report of the pilot project which contained detailed information on concept, scope, benefits of the flagship publication and suggested that the scope of the flagship publication should cover Belarus instead of Ukraine, in addition to Mauritania and Columbia which was agreed by the Investment Group.
16. The Investment Group decided that pilot publication should be submitted to the Energy Charter Conference together with decision endorsing the pilot project and mandating the Secretariat to prepare a first edition of the regular publication in 2017. The Investment Group invited the Secretariat to submit the draft as a room document at the Annual Conference meeting in Tokyo. In case the Conference decided that there was a need to introduce some changes in the publication, a revised Conference decision could be approved by correspondence in December 2016.

## **Removing Barriers to the Establishment of Energy Investments**

17. As requested by Energy Charter Conference in 2015 and pursuant to the programme of Work for 2016-2017, the Secretariat started conducting groundwork activities on the conditions to negotiate a new legal instrument providing non-discriminatory treatment in the establishment of investments as well as to identify non-discriminatory barriers to the establishment of energy investments.
18. In this context, the Secretariat prepared a discussion paper to illustrate the benefits of predictable, transparent, and stable rules for the establishment of energy investments required to achieve universal energy access (UN SDG7) and clean energy transition. The main elements of the discussion paper were discussed at the Investment Group and at the expert meeting which was held in June 2016 in Brussels.
19. Furthermore, the Secretariat informed that it carried out the research project entitled: “Eliminating barriers to the entry and the establishment of energy investments: negotiating non-discriminatory pre-investment obligations, market access and facilitating investment in the energy sector”. The Secretariat announced plans of publishing the report on removing barriers to the establishment of energy investments until the end of 2016. The report will identify discriminatory and non-discriminatory barriers and suggest instruments to remove them.
20. Furthermore, the Investment Group submitted a Conference decision on further activities with regard to removing barriers to the establishment of energy investments. This was adopted by the Energy Charter Conference on 18 October. In particular, the Conference mandated the Secretariat to formulate, in 2017, specific non-binding instruments which could remove non-discriminatory and de facto barriers to the establishment of energy investments, in close cooperation with other international organisations.

## **Modernisation of the Investment Dispute Settlement Mechanisms under Article 26 of the Energy Charter Treaty**

21. The Investment Group returned to the discussion held in 2014 on the Scoping Paper (IN 123) on Measures for Improving Investment Dispute Settlement under Art. 26. The Secretariat has issued a note (IN 153) that summarized the discussions that took place at the Investment Group between 2014 and 2016 on improving investment dispute resolution under the Energy Charter Treaty. The discussion note also included three main proposals on ongoing topics (i.e. denial of benefits, national ombudsman and transparency) which could be finalised in 2017.
22. The Investment Group welcomed the work of the Secretariat on these relevant activities and mandated the Secretariat to continue its work mainly on preparation of discussion paper on the scope of substantive investment protection standards under the Energy Charter Treaty and on the tools which could clarify them. In addition, the Investment Group expressed its readiness to continue discussion and exchange of experiences on (i) transparency, (ii) dispute settlement, (iii) best practices in conflict prevention and management; and (iv) denial of benefits.

### **Investment promotion and protection in outreach countries**

23. The activities of the Investment Group were enriched by the contributions of secondees at the Energy Charter Secretariat. The Investment Group discussed i.e. investment climate in Bangladesh, Colombia and Chad.

### **Miscellaneous**

24. In 2016, the Investment Group hosted presentations delivered by research fellows and guest speakers pertaining to several topics including:

- a) Research project comparing the investment climate in selected Contracting Parties before and after accession to the Energy Charter Treaty (by Danila Bochkarev, research fellow at the Secretariat and EastWest Institute),
- b) Research project on eliminating barriers to the establishment of energy investments (by Maiko Meguro, research fellow at the Secretariat and Ministry of Economy, Trade and Industry of Japan),
- c) Competency criteria for Investor-State Mediators (Wolf von Kumberg and Michael Cover, International Mediation Institute),
- d) Best practices on representing a respondent State in investment arbitration (by Mr Jeremy Sharpe, Shearman & Sterling),
- e) Recent trends in international investment agreements including the IIAs reform (by Elisabeth Tuerk, UNCTAD),
- f) Research project on challenges and opportunities for the development of sustainable energy systems in island-states (by Dr Alessandro Costa, University of Venice; and Ms Daria Nochevnik, Greek Energy Forum).

## **Report by the Chair of the Trade and Transit Group**

This report provides an overview of the activities of the Group for Trade and Transit (TTG) in 2016. The Group convened twice in 2016: on 13 May and 21 September.

The discussions in the Trade and Transit Group in 2016 continued to address topical issues of energy trade and transit.

### **Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes**

1. Following the adoption of the Rules Concerning the Conduct of Conciliation of Transit Disputes in 2015, the Energy Charter Conference tasked the Trade and Transit Group to work on the commentary to the Conciliation Rules to address some of the concerns of the delegations. According to Activity 7 of the Programme of Work of the Secretariat for 2016-2017, the Secretariat prepared a brief commentary to serve as an interpretative (non-binding) tool to explain and clarify some of the Rules in order to facilitate common understanding and uniform application.
2. Draft commentary prepared by the Secretariat was discussed at the Trade and Transit Group meeting on 13 May 2016. After substantial discussions, comments, suggestions and bilateral consultations, the Trade and Transit Group reached an agreement on the revised version of the commentary (TTG 153 Rev.) to be submitted for endorsement by the Energy Charter Conference.
3. In June 2016, the Energy Charter Conference adopted by correspondence the Commentary to the Rules Concerning the Conduct of Conciliation of Transit Disputes and encouraged Contracting Parties to consider to use, on voluntary basis, the Conciliation mechanism to facilitate a fast and amicable solution of inter-state transit disputes.

### **Multilateral Framework Agreement on Energy Transit**

4. The conclusions of the review of implementation of the ECT transit provisions that were approved by the Conference in 2015 (CC527), tasked the Secretariat to prepare ground works for negotiation of a Multilateral Framework Agreement on Transit of Energy Resources, covering policy objectives, country positions and substantial issues to be addressed.
5. A draft Concept paper for a Multilateral Framework Agreement on Energy Transit (TTG 154) was presented at the Trade and Transit Group on 13 May. The paper proposed to address each energy commodity such as oil, gas and electricity separately due to their different characteristics and enlarge the scope to trans-border transport and swap operations. It provided an outline of the main elements of the proposed agreement, including access to Energy Transport Facilities, capacity allocation and dispute settlement procedures. The Secretariat also circulated draft text of the agreement to facilitate the discussion.
6. The Group invited delegations to express their country positions on this issue and provide general comments on the scope and main elements. Substantial discussions

were held in the Trade and Transit Group meeting on 21 September. The Group expressed its appreciation of the work of the Secretariat and agreed on the necessity to continue consultation process by identifying specific needs and problems that exist within the constituency and elaborating alternative solutions. As an outcome, the Group agreed to continue further consultations on the scope of the proposed agreement and invite all interested delegations to contribute to this process. This was put forward for approval by the Conference.

7. As part of the consultation process on transit, the Trade and Transit Group continued to be involved into the work related to the International Meetings of Experts on Reliable and Stable Transit of Energy organised jointly by the Government of Turkmenistan and the Energy Charter Secretariat under the United Nations General Assembly (UNGA) Resolution 67/263 on “Reliable and stable transit of energy and its role in ensuring sustainable development and international cooperation”.
8. The fourth meeting of experts on reliable and stable transit of energy was organised in cooperation with the Ministry of Energy and Industry of Albania and the Secretariat of the Union for the Mediterranean in Tirana on 13 July. The meeting served as a platform for policy dialogue on energy transit to promote open energy markets, diversification of supply and sustainable development in the Euro-Mediterranean.

### **Transparency Initiative**

9. The transparency initiative on cross-border infrastructure projects and strategies allowed delegations to exchange information on practical issues related to the development of energy infrastructure.
10. Mr Ichinkhorloo Luvsantseren, Officer of the Strategic Policy and Planning Department of the Ministry of Energy of Mongolia, presented a study on Asian Super Grid Initiative for Northeast Asian energy security and regional cooperation. In his presentation, he updated the delegates on the status of Asian Development Bank’s technical assistance project for Mongolia to prepare a study which would address Gobi Tech and Asian Super Grid projects.
11. Mr Begench Rejepov, Chief specialist of the Ministry of Oil and Gas of Turkmenistan, provided an update on Turkmenistan-Afghanistan-Pakistan-India (TAPI) pipeline, following official ceremony to mark the start of construction on 13 December 2015. He presented the infrastructure projects of TAPI and East-West gas pipelines, indicated the main objectives and technical capacities and commented on the timeframe the construction process.
12. Mr Jonas Kimontas, Project Manager at Klaipėdos Nafta, illustrated the activities and game-changing role of the Lithuanian Klaipėda LNG Terminal in the Baltic Sea Region. He made a particular emphasis on the role of Klaipėda LNG in terms of ensuring security of supply of natural gas in case of possible disruptions, promotion of diversification of supplies and possibilities for small-scale LNG markets.
13. Mr Wataru Takahama, First Secretary of the Mission of Japan to the European Union, presented the Strategy for LNG Market Development. He briefed the

delegates on the challenges and countermeasures towards the creation of flexible LNG market and LNG trading hub in Japan.

14. Mr Milan Sedlá ek, Commercial Director of EUSTREAM, made a presentation on the natural gas developments in Central and Eastern Europe. He focused on the transit routes of the natural gas supplies from Russian Federation to Europe and also addressed the issue of reverse flow of gas to Ukraine from the EU.
15. Mr Andrey Ivanov, Head of department at Naftogas Ukraine, made a presentation on the role of Ukrainian gas transportation system for the EU market. He briefed the delegates on recent developments in the Ukrainian gas system and updated on the status of transit flows from Russia to Europe.
16. Mr James Nyamongo, secondee from Kenya, made a presentation on energy infrastructure development in East Africa, focusing on the challenges related to the implementation of Kenia oil pipeline.

### **Regional Energy Cooperation**

17. Regional cooperation continued to support the work of the Task Force on Regional Energy Cooperation in South and Central Asia (RECA). The Secretariat signed Memorandum of Understanding with the USAID Energy Links project in order to promote energy cooperation in the region through knowledge sharing and capacity building.
18. Regional energy cooperation in Central and South Asia will be discussed at the 12<sup>th</sup> RECA meeting in Almaty, Kazakhstan on 10-11 November 2016. The event will be jointly organised by the Energy Charter Secretariat and Energy Links project. It will address the issue of regional cross-border energy trade and serve as a platform for political dialogue and exchange of experiences.

## **Report by the Chairman of the Energy Efficiency Group**

1. This Report provides an overview of the activities of the Energy Efficiency Group in 2016, highlighting the role of energy efficiency and energy saving as the most important means to meet climate and energy security goals in cost-effective manner.
2. The EEG met in September, in Brussels. The Group continues to serve as a forum for networking and exchange of information among international organisations and other organisations active in the area of energy efficiency and maintains strong and productive relationships with a range of international organisations. The following is a summary of the key activities of the EEG in 2016.

### **PEEREA review process**

#### *In-depth energy efficiency review of Armenia*

3. An in-depth energy efficiency review of Armenia was completed in 2016, by a team of experts from Norway (review team Leader), Latvia and Romania, supported by the Energy Charter Secretariat.
4. The Energy Law of 2001 sets out the overarching legislative framework for the energy sector and regulates interrelations between legal entities involved in the energy sector, electricity, heating and natural gas consumers pursuant to the law and the state bodies. This law is currently under review. Priorities for the country are to further liberalise the energy sector and to improve energy security. The 2013 National Energy Security Concept identifies the promotion, development and investment in renewable energy technologies as critical to Armenia diversifying its energy supply and achieving energy independence.
5. Important for energy efficiency action has been the Law on Energy Saving and Renewable Energy (2004) and the national programme on Energy Saving and Renewable Energy (2007). The National Energy Efficiency Action Plan (2011-2014) is a key instrument to deliver the higher level laws and strategies and is in the process of being updated (NEEAP 2). The first NEEAP exceeded its overall target of reducing energy consumption by 63.3 Mtoe by nearly a factor of two. However, the sectoral targets were not all met. Most of the energy savings came from the public buildings and services sector and the transport sector, while considerable under-performance was witnessed in the residential buildings, industry, power, agriculture and forestry sectors.
6. The Energy Charter's in-depth energy efficiency review of Armenia sets out a series of recommendations. A high priority is to prioritise effective implementation of NEEAP 2, which requires strengthening the institutional capacity and capability within the Ministry and municipalities. This must be supported by an effective evaluation, monitoring and verification system. The Government is also strongly

encouraged to ensure its long term energy strategies properly reflect cost effective RES and EE and that they align well with international donors' initiatives.

7. On the supply side, inclusion of cost effective energy efficiency in system planning is recommended along with the promotion of cost effective electricity generation from renewable energy sources. Continued liberalisation of the energy sector, a review of power market design and continued promotion of trade and interconnection investment are encouraged. Feasibility studies, including assessments on efficient use of heat, should be conducted to aid decision-making on development of efficient co-generation.
8. For the buildings sector, the review team urges the accelerated implementation and enforcement of recent building legislation, with fast-track adoption of technical regulations and standards. This will improve effectiveness of the whole regulatory system in the building sector. To reduce energy consumption from lights and other energy-using products, minimum energy performance standards aligned with EU and Eurasian Economic Union rules are essential and should be supported with ambitious deployment and effective product quality assurance strategies.
9. Greater ambition and more proactive energy efficiency policy for industry is required. Mandatory energy auditing, energy management (ISO 5001), incentive schemes and international equipment standards should play a key role.
10. For the transport sector, where a considerable share of private vehicles are fueled by CNG, policy packages should focus on accelerating the turnover of the vehicle fleet. Improved quality of urban planning and public transport must also be priority actions.
11. The final report of the in-depth energy efficiency review of Armenia will be published before the end of 2016.

#### *Energy efficiency reviews of accession countries*

12. *Secondee*, Ms. Candy Stromvig, from Swaziland authored the energy efficiency review for Swaziland. Swaziland is a lower-middle-income country where 63% of the 1.1m population live below the poverty line and 77% of the population live in rural areas. Providing access to clean, affordable energy is a priority for the country and energy efficiency can play a key role in accelerating achievement of this outcome. The country has made good progress on enabling access to energy and there exists some effective regional cooperation. There is potential to considerably strengthen the legislative and institutional framework for energy efficiency. The country has received substantial support from the UN's SE4ALL initiative in relation to analyzing and identifying opportunities and priorities for action to improve energy efficiency and promote renewable generation.
13. Mr Rafiqul Islam, *secondee* from *Bangladesh*, authored the energy efficiency review for Swaziland. Bangladesh, with a population of 160 million, has adopted a long term strategy "Vision 2021", which is focused on boosting GDP growth to 10% p.a. by 2021, raising the economy to middle-income status, reducing the poverty rate to

15%, expanding electricity generation capacity to 24,000MW and providing affordable and reliable energy for all by 2021. Exploitation of its own energy resources, particularly coal, is a priority for the country at his moment in time. Energy efficiency is also a priority and an Energy Efficiency Master Plan has been put in place, requiring a 15% improvement of primary energy consumption per GDP by 2021 (relative to 2014), and 20% by 2030. The plan involves some 40 interventions.

#### *Energy efficiency reviews of outreach countries*

14. Ms. Vitou Sean, officer of Energy Cooperation of the Ministry of Mines and Energy Development Department for Cambodia, authored the energy efficiency review for Cambodia. The country's energy policy is focused on ensuring affordable energy supply in support of social development, which involves encouragement of exploration of indigenous energy resources. Efficient use of energy is a core element of the country's energy policy. The country has put in place strategies for electrification access and energy efficiency. Cambodia has set out a vision that by 2020 all villages in the country will have access to electricity and by 2030, 70% of total households should have access to quality grid electricity. The country's recently launched National Energy Efficiency Policy, Strategy and Action Plan aims to realise energy savings of 20% by 2035 compared to BAU projections. The country has also adopted a target to reduce national CO<sub>2</sub> emissions of 3 million tons by 2035. The 20% 2035 target is expected to deliver energy savings allocated across the sectors as follows (approximations): industry 2%; buildings 1.5%; end user products 3.5%; biomass 12%; rural electrification 1%.

#### **International Cooperation Activities**

15. In the course of 2016 the EEG and the Secretariat continued to cooperate with other international organisations, namely IEA, IPEEC, UNECE, Energy Community, Copenhagen Centre for Energy Efficiency (C2E2) and SE4ALL.

#### *Energy Charter Secretariat (ECS) coordinated project – EU4Energy*

16. In 2016, the ECS was selected to be one of three implementing partners for the 21 million euro EU4Energy project, alongside the International Energy Agency (IEA) and the Energy Community Secretariat (EnCS). The project, which runs for 4 years to 2020, builds on the previous EU-supported project, INOGATE, which was set up in 1996 between the EU and 11 partner countries from Eastern Europe, Caucasus and Central Asia and which resulted in implementation of some 70 projects.
17. The IEA will be responsible for data and energy policy, and the web portal for the project, while the ECS and EnCS will be responsible for implementing the component of the project associated with development of the legislative and

regulatory environment and identification of key energy infrastructure that could be funded by the EU. The ECS will work with Armenia, Azerbaijan and Belarus, while EnCS will work with Georgia, Moldova and the Ukraine. The project's inception phase completed at the end of October 2016 and multi-annual work programmes for each country have been developed.

*EU Sustainable Energy Week – Energy Charter cooperation with Association Technique Energie Environment (ATEE)*

18. On 16 June 2016, the Energy Charter Secretariat jointly organised a panel session, 'Energy Efficiency Policies: Challenges, Data, Results, and Lessons Learnt', with the Association Technique Energie Environment (ATEE) during the EU Sustainable Energy Week in Brussels.
19. During the session the panelists gave an overview of the conclusions from key European initiatives in the field of evaluation of energy efficiency policies, and from the In-Depth Energy Efficiency Reviews conducted by the Energy Charter. They also discussed what has been achieved in terms of monitoring and evaluation practices in European and Central Asian countries, and what could be further improved in order to support stronger development of energy efficiency policies and markets. Presenters also highlighted the important role that the Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) play in promoting foreign investments and inter-governmental expert sharing in energy efficiency.