

**ENERGY CHARTER
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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Report by the Secretary General on the implementation of the vision 2017-2021, the activities in 2018, the CONEXO policy implementation in 2018, and the EU4Energy project in 2018

The Energy Charter Conference at its 29th Meeting held on 27-28 November 2018 **took note** of the Secretary General's Report on the implementation of the vision 2017-2021, the activities in 2018, the CONEXO policy implementation in 2018, and the EU4Energy project in 2018 as contained in document CC 632 (attached hereto).

Keywords: Report, 2018, Secretary General, CONEXO, Vision 2017-2021, EU4Energy, implementation

REPORT BY THE SECRETARY GENERAL ON THE IMPLEMENTATION OF THE VISION 2017-2021, THE ACTIVITIES IN 2018, THE CONEXO POLICY IMPLEMENTATION IN 2018, AND THE EU4ENERGY PROJECT IN 2018

This report provides an overview of the activities undertaken by the Energy Charter Secretariat in 2018. The first section is an update on the implementation of the Vision 2017 – 2021, followed by an update on the Activities of 2018, then the Progress Report on the CONEXO policy, and lastly the EU4Energy activities for 2018 as it is not included in other reports at the 29th Energy Charter Conference.

1. I want to thank the **Chairmanship of Romania** for its support and guidance during 2018. I would like to express gratitude to the Chairman of the Energy Charter Conference, Mr Robert Tudorache, State Secretary, Ministry of Energy of Romania for his exceptional commitment throughout the year. A special thanks is also due to the Vice-Chair of the Conference, Ms Elena Popescu, and the staff of the Ministry of Energy of Romania.
2. I thank all those involved with the Subsidiary Groups of the Conference, particularly those delegates who took part in the deliberations, as well as those who gave their time and effort to act as Chairs and Vice Chairs. Their input is vital to achieving the objectives of the **Energy Charter Conference**.

Implementation of Vision 2017 - 2021

3. In the summer of 2016, as a part of the discussions with delegates before my reappointment for the second mandate, I presented a program document called **International Energy Charter: Vision for 2017-21**. 2016 was a difficult year for the Energy Charter Process. After a severe reduction in national contributions, the Secretariat was implementing decisions on its re-structuring and preparing to relocate the premises in Brussels while fully implementing the Program of Work. Today we could report that the essential tasks and deliverables from Vision 2017-2021 are on pace to be completed by the end of 2018.
4. In addition to the Code of Conduct approved by the Conference in 2017 and in keeping with the spirit of good governance and transparency that underpins the work of the Secretariat, the Budget Committee recommended in 2018 the approval of the draft Manual on data protection (which codifies the existing self-regulation and practice on data protection, as well as evolving best international practices).
5. The **Secretariat** has proven the operability in all core areas of the ECT, with a particular focus on investment, transit and dispute resolution in a new budgetary situation and in the new, more suitable premises. We raised professional awareness about the International Energy Charter among Members and Observers

- through the Secretariat's Knowledge Centre training, publications and social media activities.
6. We have streamlined meetings of the **Subsidiary Bodies** of the Energy Charter Conference by replacing all existing groups with two main Subsidiary Bodies - the Strategy Group and a new Implementation Group. We have established a more efficient, result oriented system of meetings, decreased costs for the Secretariat and Member States and updated the focus of the Secretariat's expertise to agreed priorities.
 7. In the core area of **Investment**, I am very proud of the successful development of the methodology, the questionnaire and publication of our flagship publication "Energy Investment Risk Assessment". As you know, for its first public edition in 2018, 30 countries from Asia, Africa and Europe volunteered. The Secretariat already started preparation for #EIRA2019 edition in cooperation with participating countries.
 8. In the work stream of **Transit** due to very technically specific issues, a Subgroup of the Implementation group was created to discuss soft law solutions to address critical problems of energy transit.
 9. Another important area is the **Dispute resolution**. After the Conference endorsed in 2016 the Commentary to the transit conciliation rules and the Guide on Investment Mediation, in 2018 we successfully finalised *the Draft Model Instrument on Investment Dispute Management* and further promoted Investment Mediation through trainings (this year we conducted the 3rd training for investment mediators) and public activities. The Draft Model Instrument is already attracting a lot of attention from governments. A new website with special features (www.energychartertreaty.org) has been developed and will be operational soon to provide a more user-friendly and interconnected information on cases (including summaries of awards, decisions), ECT provisions (and their evolution), notifications regarding the ECT, etc. The Secretariat continued to provide neutral, independent legal advice and assistance in dispute resolution for parties through its Conflict Resolution Centre.
 10. Interacting with governments is a vital part of the agenda of any intergovernmental organisation. In the specific situation of the International Energy Charter, a focus was on **Consolidation** efforts. Iceland successfully proceeded with the ECT ratification process. Australia, Belarus and Norway did not provide any signal that they would be interested in ratification regardless of the Secretariat's efforts, and Russia appears to be further distancing itself from the Energy Charter Process. On the other hand, all Contracting Parties have ratified or apply provisionally the Trade Amendment, except for Japan.
 11. On the side of **Expansion**, we have witnessed Jordan and Yemen ratifying the ECT. Mauritania and Burundi joined Pakistan in the "waiting room" after being

- invited to accede to the ECT. Even more countries have concluded all three accession reports (Bangladesh, Chad, China, Eswatini, Uganda) and joined Morocco and Niger working on their internal approval of the accession reports. Gambia, Nigeria, Panama, and Senegal expressed their potential interest to accede to the ECT and had prepared at least one of the necessary reports.
12. Signatories of the 2015 International Energy Charter have been the focus group for further engagement. *Observer countries by invitation* were phased out at the end of 2016, which simplified the structure of the constituency of the International Energy Charter. Only countries which confirmed sharing the values and principles of the Energy Charter Process remained Observers.
 13. In 2017 at the Ashgabat Ministerial Conference, it was agreed to start discussions on the potential **Modernisation** of the Energy Charter Treaty (CCDEC2017 23). This decision opened a way to organise a scoping exercise with delegates through which a list of topics for possible modernisation was identified.
 14. The **Vision: the International Energy Charter 2021** did not change since 2016 and could be restated again: *The (modernised) Energy Charter Treaty has the potential to become a global “golden standard” for energy investment and transit rules. It can become an indispensable tool for securing private investment necessary for successful global low carbon transition. This will be impossible without mobilising the political support of its core members including the EU, improving operational conditions of the Secretariat by providing adequate financial resources. The recent political neglect and the underfinancing of the process gives a shallow starting point. Even a limited political engagement and relatively small voluntary contribution would have significant positive impacts for achieving the goal of a modernised Treaty.*
 15. *In 2021, the International Energy Charter with (a modernised) ECT will remain a niche organisation, standing for ‘protecting investment for the global energy transition’. Its membership would spread on all continents and would become quasi-universal. By 2021, a modernised, faster and more transparent investment dispute settlements procedures, would continue to play an important balancing role between the ‘legitimate rights of governments to regulate’ and ‘legitimate expectations of foreign investors for fair and equitable treatment’.*

The implementation of the Programme of Work 2018

16. The **Implementation Group** proceeded with the establishment of the Technical Subgroup on Transit, which, in the course of this year, held two meetings. Among the topics brought to the attention of the Subgroup were the update to the Model Agreements on Cross-Border Pipelines, which will eventually lead to their Third Edition in 2019 and further development of soft law instruments on transit. An

analysis of transit regulations in Turkey, Kazakhstan and Kyrgyzstan based on a questionnaire was also produced and presented.

17. The Implementation Group discussed the first public Energy Investment Risk Assessment publication #EIRA2018 which evaluates specific policy, legal and regulatory risks affecting energy investment on a country by country basis. It aims to identify policy gaps, provide learning opportunities, and stimulate reforms and reduce the risk of investor-State disputes. The aim is that in-country progress can be tracked over time. The Implementation Group was closely involved in the development of the methodology and planning of the EIRA publication. #EIRA2018 contains 30 country profiles. To officially mark the first public edition of this publication, the Secretariat hosted a high-level publication launch in October 2018. A word of thanks to participating governments and the more than 230 external contributors that participated on a pro bono basis. National budgetary allocation by the Energy Commission of Nigeria (ECN) has been made to cover the extended country profile of Nigeria's Energy Investment Risk Assessment (EIRA), which was presented during Nigeria's National Energy Summit in October 2018
18. In addition, the Implementation Group also took note of the work that had been carried out in 2018 by the Secretariat (together with a Task Force of external experts) in relation to a draft standard destination flexibility/cargo diversion clause that could be accepted generally by the market. The Secretariat is also finalising a Digest of the publicly available ECT awards and proposed an updated list of transit panellists as well as new appointments for the roster of transit conciliators, facilitating the use of both the trade dispute resolution provisions under the ECT and the transit conciliation rules. Finally, the Secretariat also published an updated transparency document with the designated enquiry points (as requested under Art. 20 of the ECT).
19. The Secretariat facilitated two meetings of the Energy Charter **Industry Advisory Panel**. The first took place in Brussels as joint meeting of the Subgroup on Modernisation and the IAP, discussing the modernisation of the Energy Charter Treaty; the second in Bucharest, to discuss issues regarding investment in innovation and new technologies that will impact the energy sector in the coming decades.
20. In 2018, the Secretariat prepared an in-depth **energy efficiency** review of Montenegro. The review was conducted by the energy efficiency unit of the Secretariat in close cooperation with a team of experts from Romania (Chair of the review team), Bosnia and Herzegovina, Czech Republic and the Energy Community Secretariat. The review sets out a series of recommendations, to be published before the end of 2018. The Secretariat also provided assistance to a secondee from China in developing the Energy Efficiency Accession Report that was officially submitted for approval to the National Energy Administration in

June 2018 and China Energy Efficiency Report that was published in October 2018.

21. In 2018, the Energy Charter **Knowledge Centre** organised or co-organised three training programs on energy policy and dispute resolution-related subject matter, including those staged in Beijing, China (in partnership with the Chinese Academy of Social Sciences), Brussels, Belgium (investment arbitration masterclass) and Ploiesti, Romania (following the 29th Meeting of the Energy Charter Conference). The Centre focused on Member countries by jointly organising the Energy Charter Bucharest Forum in June and a high-profile workshop in Brussels on energy investments in Uzbekistan in October.
22. The Knowledge Centre was involved in promoting the visibility of the Energy Charter Process and raising awareness on the ECT through forums and seminars with Observer countries such as the co-organisation of the 12th Teheran International Energy Conference in Iran in June, together with the Ministry of Energy of Iran. The Secretariat fostered close relations with Jordan by engaging in a fact finding mission exploring the investment climate of the country. This work culminated in the high-level Jordanian participation at the launch of #EIRA2018. The Centre also hosted a briefing seminar with a visiting delegation of energy officials from the government of the Republic of Korea, in November.
23. The **Subgroup on Modernisation** met several times during 2018 following the request of the Conference in 2017. After substantial discussions and consultations with Observers and the industry, the Subgroup successfully completed the first step towards the potential modernisation of the ECT by reaching consensus on a list of topics to be considered. The next step is to agree on the particular policy option for each topic and to gather the political will of the Members of the Conference to start potential negotiations based on those topics.

CONsolidation-EXpansion-Outreach Policy 2018

24. In 2018, two countries have sent to Portugal their instrument of accession to the Energy Charter Treaty: **Jordan and Yemen**. This has been the result of many years of support from the Secretariat and extensive preparatory work in the acceding countries. A special welcome is organised at the Annual Meeting of the Conference in Bucharest.
25. Since 2015, the instrument that facilitates familiarisation of the ECT has been the International Energy Charter, the signing of which grants the status of Observer to the Energy Charter Conference. To date this instrument has attracted 89 signatories from all continents, including new Observers that are major energy world players, such as China, Iraq, Iran, Nigeria and UAE. Azerbaijan and Guyana signed the International Energy Charter during the course of 2018.

26. While the International Energy Charter remains open to new countries, international organisations and previous invitation of the Conference, the Secretariat's work focuses on accompanying observers on their way to ECT accession. Accessing to the ECT is a lengthy, rigorous and politically challenging process. On average, becoming a contracting party to the Treaty takes at least 7 years. While the Secretariat provides technical assistance throughout the accession process, the political implications inherent in the decision to accede to the ECT require political and diplomatic support from the entire constituency.
27. The Secretariat and the China Electricity Council, with the support of the National Energy Administration, established in September 2017 a Joint Research Centre in Beijing. In September 2018, the Research Centre held its 1st Annual Symposium in Beijing. Throughout the year, the Research Centre has broadened the knowledge of the International Energy Charter through research and public activities including the promotion of the Energy Charter Treaty and its principles in China. China has since completed all three accession reports. The Joint Research Centre works on the basis of voluntary contributions (from Poland and the Netherlands) and the participation is open for countries, organisations, industry and academia.
28. Expansion efforts have benefited from some voluntary contributions. Uganda, China, Nigeria and Iran have allocated funding to support activities of the Secretariat with the respective countries. The EU Technical Assistance Facility for the SE4All initiative has provided support to African countries interested in improving the investment framework in line with the common principles of the International Energy Charter.
29. Nigeria is preparing for accession to the ECT. The Secretariat in collaboration with Nigeria and the European Union organised the high level National Energy and Climate Change Summit in Abuja in October 2018. The accession report prepared by a ECN expert during his secondment to the Secretariat in Brussels was presented at the Abuja Summit. The Nigerian government announced its intention to hold the next Summit in 2019.

EU4Energy Project 2018

30. In 2018 the Secretariat continued to implement a programme of actions regarding Energy Policy in Eastern Partnership countries and Central Asia, called the EU4Energy Programme. Energy Charter is responsible for delivering the technical assistance activities to Armenia, Azerbaijan and Belarus within the Component EU4Energy Governance. The main objective of the assistance is to assist partner countries to implement policy recommendations developed by the Energy Charter Secretariat; provide support to strengthening the existing legislative and regulatory frameworks in the areas of electricity and gas markets, energy efficiency and renewable energy.

31. Strengthening energy efficiency policies and legislation continued to be the priority areas for the activities in **Armenia**. Following the broad consultations, initiated within EU4Energy and the Step-by step enforcement guideline presented in early 2018, in the Armenian Government adopted the Technical regulation for energy efficiency in buildings April 2018. During this year, the aim of the activities is to complement and strengthen the implementation of the existing legislative and regulatory framework in the area of energy performance of buildings in line with the best EU practice, namely by developing eco-labelling requirements for different types of buildings (not covered by the technical regulation for energy efficiency) as well as introducing nearly-zero energy buildings requirements.
32. In **Azerbaijan**, support is provided to elaboration of relevant legislation on energy efficiency in line with best EU practices. This year, the first draft of the Law on Energy Saving and Energy Efficiency was completed, presented to the Ministry of energy and further to the Cabinet of Ministers of Azerbaijan. In addition, EU4Energy supports the process of development of the first Long-term energy strategy of Azerbaijan. The assistance included in-depth gap analysis of the existing strategic, institutional and legal frameworks in the energy sector of Azerbaijan. Broad stakeholders consultations were further organised by the project on the strategic goals and priority sectors for the energy strategy. Based on these consultations, a draft outline and the structure of the long-term energy strategy was proposed and a detailed Roadmap for the development of the strategy.
33. In **Belarus** following last years recommendations of the Energy Efficiency Task Force, EU4Energy is supporting the development of a legislative and regulatory framework for developing the energy efficiency services market. This will be done by both amending the existing legislation, defining energy efficiency services and by providing proposals for a draft secondary legislative acts adopting the respective rules, procedures and model contracts.
34. Apart from strengthening the legislative framework, EU4Energy Governance is working to support partner countries in introducing more coherent, effective and efficient procedures for cross-ministerial coordination and public consultations in forming policies and legislation in the energy sector. For Armenia and Belarus the work was aimed also to support the implementation of specific recommendations, given within the EIRA extended profiles in 2017. In this regard, the Energy Charter Secretariat undertook in-depth gap analyses of existing legislative frameworks and practices in all three countries and developed tailor-made recommendations in the form of a “Code of Good Practice” and as well as interactive communication workshops.

Conclusion

35. Throughout 2018, I continued my endeavours to promote the principles of the International Energy Charter. I met with Ministers, Ambassadors, Head of Delegations, and representatives of the energy industry to outline the essential role and future potential of the Energy Charter Treaty and the International Energy Charter. I spoke at many conferences and events to explain the specifics of the Energy Charter in the areas of investment, transit, trade, dispute resolution and energy efficiency.
36. In conclusion I must make reference to the immense professional commitment and work of each member of the Secretariat without whom none of the tasks of 2018 would have been completed. The efforts of officials were again very effectively complemented by research fellows, young energy professionals and trainees. I thank each and everyone of those who has worked in the Secretariat during the course of 2018.