

**ENERGY CHARTER
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Related documents: CC 635, CC 641

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Report by the Chair of the Implementation Group

The Energy Charter Conference at its 29th Meeting held on 27-28 November 2018 **took note** of the Report by the Chair of the Implementation Group as contained in document CC 635 (attached hereto).

Keywords: Report, Chair, Implementation Group

Report by the Chair of the Implementation Group

This report provides an overview of the activities undertaken by the Implementation Group in 2018. The Group convened six times in 2018: 1 February, 22 March, 15 May, 6 July, 7 September and 24-25 October. In general, the discussions at the Implementation Group in 2018 were devoted to areas carried over from the previous year and relating to investments in the energy sector (including the Energy Investment Risk Assessment publication), energy efficiency, transit of energy resources, but also some more recent developments such as particular aspects of the modernization of the Energy Charter Treaty, which then were transferred to the Strategy Group.

Transit Activities of Energy Resources

1. In 2017 the Energy Charter Conference in Ashgabat has welcomed the work on energy transit and determined to continue working on transit issues with a view of supporting diversified energy sources and supply routes and secure reliable and sustainable energy transportation.
2. The Implementation Group, in 2017, contemplated creation of a specialized sub-group to work on transit-related matters. In 2018, the new Technical Subgroup on Transit Issues was thus formed, and its Chair and Vice-Chair were appointed. The Subgroup was tasked with determining priority activities for 2018 and 2019 and to conduct regular meetings for that purpose.
3. The Subgroup on Transit conducted two meetings in May and October of 2018 and focused on Model Agreements for Cross-Border Pipelines and on the issues related to access to infrastructure, regulatory framework and tariffs, for which the Transit Unit of the Secretariat had developed and disseminated a questionnaire. Three reports, stemming from the questionnaire, were also presented at the second meeting and covered analysis of transit regulations on third party access in Turkey, Kazakhstan and Kyrgyzstan. The second meeting of the Subgroup also saw presentation and discussion on the work done by the Transit Unit of the Secretariat and Legal Advisory Task Force related to the Third Edition of the Model Agreements, which will be finalized and presented for the Energy Charter Conference for approval in 2019. The advanced draft of the Third Edition was met with genuine interest from the Subgroup members, and the Implementation Group has further welcomed the work product noting that certain aspects thereof could be helpful to countries in their drafting of relevant intergovernmental and host government cross-border pipeline agreements.
4. As a result of the second meeting of the Subgroup on Transit, its members have also identified and the Implementation Group has further taken note of and approved the Subgroup to focus on transit issues not forming part of the list of topics of modernization of the Energy Charter Treaty.

Energy Investment Risk Assessment (EIRA) Flagship Publication

5. In 2018, in line with previous Conference decisions, the Implementation Group

continued working on the EIRA Publication. The Group has primarily focused on the methodological improvements, the number of participating countries and further enhancement of the EIRA Publication.

6. Building upon the preparatory work in 2016 and 2017, the geographical coverage of the EIRA project was extended, reaching over 30 jurisdictions for its 2018 edition. The scoring method and risk indicators were further refined along with the strengthening of the underlying questionnaire and validation process, - all in order to identify and assess policy, legal and regulatory risks in the energy sector of the jurisdictions involved.
7. The Implementation Group welcomed the Secretariat's work on the preparation of EIRA 2018 and the improvements in the methodology. In the meantime, the Group has further discussed matters related to EIRA 2019, such as management of the growing number of participating countries and budgetary implications
8. The first edition of the EIRA Report in 2018 was published and launched on 3 October 2018, containing profiles of 30 member and observer countries. In addition, one extended country profile for Nigeria, which has been developed based on a voluntary contribution from the Nigerian government. At the last meeting of the Implementation Group on 25 October 2018, the Secretariat delivered a presentation on EIRA 2018, outlining the scope and purpose of the EIRA 2018 Report, its benefits and targets, and containing an overview of its risks and indicators, the highlights of data collection and validation, and lessons learned from the first publication. The presentation also touched upon the planning for EIRA 2019 setting out dates and milestones. The Implementation Group, at this last meeting in October, took note of the lessons learned and experience gained from EIRA 2018 and of the planning for EIRA 2019.

Other Investment-Related Topics

9. The Implementation Group, in October 2018, also covered the possibility of obtaining foreign direct investment (FDI) data in the energy sectors of countries. It was reported by the Secretariat that the information gathering process facilitated by the EIRA Project, was a first attempt to obtain the FDI data, with less than a modest result. The Secretariat proposed to include preparatory work on recording and reporting FDI in energy into the Program of Work for 2019. There was no consensus in the Implementation Group on this work, after which the discussion was moved to the Budget Committee.
10. As part of the accession process to the Energy Charter Treaty a State is requested to elaborate and approve three accession reports, one of them being a report on investment climate and exceptions to national treatment. In 2018, The Gambia, Nigeria and Uganda have each developed such an investment accession report. During the Implementation Group meeting on 6 July 2018 Nigeria and Uganda presented the investment climate in their respective energy sectors. The delegates were informed that The Gambia, Nigeria and Uganda are finalizing their ECT accession reports on investment climate and exceptions to national treatment. The Implementation Group noted the progress on the investment accession reports of The Gambia, Nigeria and Uganda.

In-Depth Energy Efficiency Review of Montenegro

11. An in-depth energy efficiency (EE) review of Montenegro was completed in 2018. 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.
12. The general recommendations highlight the importance of the update of the energy development strategy until 2030 and the establishment of long-term targets and objectives for energy efficiency and demand-side management. The Government is strongly encouraged to ensure coordination and coherence between the Energy Development Strategy and the Energy Efficiency Action Plans, to prioritise the full transposition of the Energy Efficiency Directive (EED), and to improve implementation of energy efficiency policies and measures.
13. The more structured recommendations concern the power sector, industry, buildings, energy-using products, and transport sector. In each of the listed areas the recommendations focus on a set of measures to be taken by the Government and its authorized departments to, *inter alia*, (1) reduce distribution electricity losses; (2) implement energy audit system; (3) enhance implementation of energy performance certification schemes; and (4) exercise control and implementation of eco-design requirements, respectively.

Demand-Side, Distributed and Sustainable Energy Resources

14. Following the requests of the delegates at the fifth implementation group meeting in 2017, the Secretariat conducted a high-level analysis related to ECT provisions for demand-side, distributed and sustainable energy resources based on the Study on the evidence of cross-border investment in demand-side energy efficiency. The analysis set out the issues and reasoning for the need to discuss and consider modernisation options relating to demand-side energy resources and also to distributed and sustainable energy resources where ECT coverage is incomplete or unclear.
15. Evidence set out in the study showed that foreign investment is starting to flow in demand-side energy markets but there is an investment gap to bridge as investment flows are expected to increase significantly in coming years. In 2017 cross-border investment in energy efficiency was generally limited to jurisdictions where exist efficient, cost-reflective consumer prices and effective energy efficiency policies. While huge potential for foreign investment in demand-side energy efficiency might exist in most jurisdictions, it can only be unlocked if Governments take action and introduce and strengthen policies and legal/regulatory frameworks.
16. The Study highlighted that the ECT was intended to be neutral in its treatment of different energy resources and technologies. However, it was identified that the definition of “economic activity in the energy sector” of the ECT does not include energy efficiency and demand side energy resources. It was therefore concluded that the Treaty’s provisions should be consistent in their equal treatment of different energy resources and technologies.
17. Many Observer and Outreach countries, particularly in fast-developing regions expressed strong interest in the contribution that the ECT can make to enabling

investment in sustainable energy, including energy efficiency. Strengthening and/or clarifying the provisions of the ECT in relation to sustainable energy resources, including those that are distributed and/or located on the demand-side of the energy system, could therefore help facilitate expansion of ECT membership. Thus, the Implementation Group decided to include the definition of “economic activity in the energy sector” of the ECT to the draft list of topics for the discussion by the Subgroup on Modernisation.

Designation of Enquiry points and Nominations for individuals to serve as panellists

18. Article 20(3) of the ECT requires that each Contracting Party designates one or more enquiry point for the provision of information about laws, regulations, judicial decisions and administrative rulings that affect matters covered by the ECT. Those enquiry points do not need to coincide with delegates attending the meetings of the subsidiary groups of the Conference. The previous version of the transparency document on designated enquiry points was published in 2010 and it included some minor updates received in 2014 during the review under Art. 34 (7) of the ECT. On 7 September 2018, the Implementation Group noted the transparency document on designated inquiry points and called for Contracting Parties to update the nomination of enquiry points as contained therein. On 15 October 2018, the Secretariat published in the public website the revised transparency document with the updated enquiry points.
19. Following a call for nominations for individuals to serve as trade panelists and/or transit conciliators, on 24 October 2018 the Implementation Group recommended the Energy Charter Conference the approval of the list of designations of the Secretary General, together with the designations made by Georgia. Delegations are reminded that each contracting party may still designate up to two individuals to serve in the roster of trade panelists and up to three individuals to serve in the roster of transit conciliators.

Standardisation of Provisions in LNG Sale and Purchase Agreements

20. On 7 September 2018, the Implementation Group 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. The Secretariat is finalizing consultations with relevant stakeholders of the LNG industry to make sure that the standard clauses could be accepted generally by the market.

Draft Model Dispute Management Instrument

21. On 15 May 2018, the Implementation Group took note of an update of the statistics and a chart on investment arbitration cases under the ECT, as well as the ongoing preparation of the additional website that would provide a more user-friendly and interconnected information on investment cases (including summaries of awards,

decisions...), ECT provisions (and their evolution), notifications regarding the ECT, etc. The Implementation Group welcomed the work done by the Secretariat and noted the usefulness for the discussions on modernisation.

22. On 7 September 2018, the Implementation Group welcomed the work of the Secretariat in preparing a Draft Model Instrument on Investment Dispute Management and recommended the Conference to endorse it. The Energy Charter Secretariat will stand ready to provide technical assistance and capacity building for Governments voluntarily wishing to implement a domestic document based on the Model Instrument. The Draft Model, developed with the support of the IMI Investor-State Mediation Taskforce, is based on several existing Protocols and incorporates the experience of many government officials dealing with investment disputes. The Draft Model had been discussed not only at the Implementation Group, but also with government officials, World Bank, UNCTAD, AALCO and UNCITRAL at several workshops during 2018 (Brussels, Beijing, Hong Kong, Abu Dhabi, Vienna, Geneva, Arusha –November and Washington –December).