

**ENERGY CHARTER
SECRETARIAT**

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Related documents: CC 684 Rev 2, Mess 1792/21

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Adoption by correspondence - Report by the Secretary-General on the Activities in 2020

By document CC 684 Rev 2, dated 18 February 2021, the Energy Charter Conference was invited to take note of the revised Report by the Secretary-General on the Activities in 2020 (attached). As specified by Rule 19 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 that decision should notify the Secretariat of its position in writing by 9 March 2021.

Having received no objections within the specified time limit, on 9 March 2021, the Conference **took note**, with immediate effect, of the revised Report by the Secretary-General on the Activities in 2020.

Keywords: Report, Secretary-General, Activities, 2020

REPORT BY THE SECRETARY-GENERAL ON THE ACTIVITIES IN 2020

*This report (following article 35.3 of the Energy Charter Treaty) provides an overview of the activities undertaken by the Energy Charter Secretariat in 2020. A summary is provided, followed by the implementation of the Programme of Work for 2020, the EU4Energy activities for 2020 and an update on the CONEXO policy. **The Conference will be invited to take note of the report.***

1. I want to thank the **Chairmanship of Azerbaijan** for its support and guidance during the year. A special appreciation to the Chairs of the Energy Charter Conference, HE Mr Parviz Shahbazov, Minister of Energy of Azerbaijan and Mr Samir Valiyev, Deputy Minister of Energy and Vice-Chair of the Conference, as well as to Mr Ilir Bejtja, Deputy Minister of Infrastructure and Energy of Albania and Vice-Chair of the Conference, and Mr Hakob Vardanyan, Deputy Minister of Territorial Administration and Infrastructure of Armenia and Vice-Chair of the Conference for their commitment throughout the year.
2. I thank all those involved with the Subsidiary Groups of the Conference, particularly those delegates who gave their time and effort to act as Chairs and Vice-Chairs: Chairs of the *Strategy Group* - Ms Sofia Sanz Estébanez (Spain) Chair until May 2020 and Mr Samir Abdurahimov interim Chair until the end of the year 2020; Chair of the *Implementation Group* and the *Working Group on Governance Issues* - Ms Klara Rakhmetova (Kazakhstan); Chair of the *Budget Committee* - Mr Christian Bühlmann (Switzerland); Chair of the *Modernisation Group* - Ms Sofia Sanz Estébanez (Spain) Chair until May 2020, Mr Lukas Stifter (Austria) Chair since end of June 2020; Vice-Chairs of the *Implementation Group* - Mr Johan Vetlesen (Norway) and Mr Aziz Khamidov (Uzbekistan); Vice-Chairs of the *Working Group on Governance Issues* - Mr Guy Lentz (Luxembourg) and Mr Towfick Sufian (Yemen); Vice-Chairs of the *Modernisation Group* - Mr Sunao Orii (Japan), Mr Samir Abdurahimov (Azerbaijan), Mr Guy Lentz (Luxembourg) and Mr Felix Imhof (Switzerland). Their input was vital to achieving the objectives of the Energy Charter Conference and advancing the Energy Charter Process.

Summary of 2020

3. The members of the Conference set two key priorities for the work of the Secretariat in 2020 – implementation of the conclusions of the 2019 Review under Art. 34 (7) and the negotiations on the modernisation of ECT. The overall working environment has been negatively affected by the response to COVID-19 pandemics, which since mid-March made the international travel impossible and have a limited physical presence at the Secretariat to various

level for the rest of the year. Due to the impact of COVID-19 pandemics in 2020, all International Energy Charter related activities, including Subsidiary Group meetings after 15 March were organised in the virtual format.

4. Despite the extraordinary difficult working conditions, the Secretariat was able to adapt to this environment, create and maintain necessary infrastructure for assisting the Conference and to carry on all other functions assigned to it. Most of the tasks of the Programme of Work 2020 have been delivered, with the exception of those cancelled or postponed upon the request of partner Governments and institutions.
5. I must make an acknowledgement to the immense professional commitment and work of the members of the Secretariat without whom none of the tasks of 2020 would have been completed. I also appreciate close and efficient cooperation with the Staff Committee, which allowed for flexible adaptation of working conditions reflecting continuously changing antiCOVID-19 rules.

Implementation of the Programme of Work 2020

6. Delivery on the key priority activities 1 and 2 was consuming most of the time and resources of the Secretariat. Most of the remaining activities continuing from the previous period were not considered by delegates as priorities this year, and the Secretariat was able to devote only limited resources on them. The exceptions were activities 5 (EIRA), 9 (CONEXO) and 14 (EU4Energy), with the detailed description below. In delivering on its tasks, the Energy Charter Secretariat showed remarkable resilience, with high quantity and quality of deliverables.
7. In 2020, the Secretariat organised 27 meeting days of different Subsidiary Bodies (including 17 meeting days of the Modernisation Group). For comparison, in 2019 and 2018, there were respectively, 18 and 15 meeting days of Subsidiary Groups. The Secretariat altogether prepared 132 documents (including revised versions) for consideration of delegates.

Activity 1. Implementation of the conclusions of the 2019 Review under Art. 34 (7) including the recommendation of the International Public Audit

8. Based on the decision of the Conference, the work to implement this priority was spread across the following Subsidiary Groups: Strategy Group (three meetings), Budget Committee (four meetings), Implementation Group (three meetings) and Working Group on Governance Issues (four meetings). Due to the interrelated topics and the need for coherent output, the Conference tasked the WG on Governance Issues to ensure overall output coordination. More than 70 different documents, including updates, were prepared by the Secretariat and discussed by delegates. An analytical Progress Report (GOV

14 rev) was discussed on 30 November at the WG on Governance Issues. Discussions of delegates in most of the work streams are expected to continue in 2021.

9. Reports of the Chairs of Subsidiary Groups submitted to the Conference contain a detailed description of the results achieved so far. Implementation of this priority was consuming most of the time and resources of the Secretariat, especially from Senior Management, Legal Unit and Administration and Finance.

Activity 2. **Modernisation of the Energy Charter Treaty**

10. Delegations convened at the Modernisation Group meetings four times in 2020, including three negotiation rounds. During the three negotiation rounds, the Group considered (text) proposals, discussion papers and comments pertaining to the approved list of topics, without prejudice to delegations' final positions. The discussions adhered to the following schedule:
 - 6-11 July 2020: definition of "Charter", definition of "Economic Activity in the Energy Sector", definition of "Investment", definition of "Investor", clarification of "most constant protection and security", definition of "fair and equitable treatment" (FET), umbrella clause, compensation for losses, definition of "indirect expropriation", denial of benefits, MFN clause, right to regulate, and transfers related to investments.
 - 8-11 September 2020: definition of "Transit", access to infrastructure (including denial of access and available capacities), definition and principles of tariff setting, sustainable development and corporate social responsibility, frivolous claims, security for costs, third-party funding, transparency, valuation of damages, and outstanding issues related to the definition of "Investment" and the right to regulate, such as public debt.
 - 3-6 November 2020: pre-investment, REIO, obsolete provisions, and remaining topics from previous negotiation rounds (in particular, the Group discussed the following topics: definition of investment, definition of investor, right to regulate, most constant protection and security, frivolous claims, third party funding, security for costs).
11. The aim of the three negotiation rounds in 2020 was to have an open discussion on the topics proposed for modernisation to gain a greater understanding of the topics and to ascertain initial impressions of the positions of the delegations. The Modernisation Group agreed that the progress attained in the three negotiation rounds of 2020 achieved this aim. Pending confirmation of the exact dates and of a more detailed work plan at the Group's last meeting in 2020, the negotiations for the modernisation of the ECT will continue in 2021. Each negotiation round (which took place virtually) gathered around 100 participants and required the active support of the Secretariat. After each negotiation round, a public communication (approved by consensus) was published at the www.energycharter.org site.

12. The Legal Unit of the Secretariat, lead by General Counsel, provided the most of substantial and technical support for the modernisation group and its regular steering group meetings. Transit unit was also involved in the transit-related discussion.
13. As for **Policy Dialogue on Transit of Energy Resources** and **Policy Dialogue on Regional Cooperation** (Activity 3 and 4), the Secretariat's Transit Unit continued its work on promoting regional energy cooperation in Central and South Asia focusing on sustainable energy development, regional markets and interconnection. Work on the policy dialogue has culminated in the *16th Meeting of the Taskforce on Regional Energy Cooperation*, in close cooperation with the Ministry of Energy of Uzbekistan. Also, the Knowledge Centre organised an on-line *Technical workshop on integration of power markets* in cooperation with the Economic Cooperation Organization (ECO) to discuss international experiences as well as the challenges and perspectives of developing ECO Regional Electricity Market.
14. The **Energy Investment Risk Assessment EIRA** (Activity 5) is the biggest ongoing project of the International Energy Charter which involves hundreds of stakeholders from Governments and the private sector annually. This year the Secretariat developed the third *Energy Investment Risk Assessment (EIRA) publication*.
15. #EIRA2020 contained 30 country profiles of Member and Observer countries and was published and presented on 6 October 2020. In 2020, the EIRA publication introduced a new chapter which summarised the actions taken by countries to mitigate the EIRA risks and address the improvements suggested in the report's previous editions. Also, background information from Orbis Crossborder Investment database (run by Bureau Van Dijk, analytical branch of Moody's rating agency) on energy projects and deals completed between 2015-2020 was included into the country profiles.
16. The use of the EIRA website (www.eira.energycharter.org), launched in 2019, simplified the data collection process by allowing to fill the questionnaire and to provide the supporting documents on-line. The website provides detailed information on each participating country, a year-on-year comparison of the countries' performance and risk level, and an on-line library of over 1,800 primary legal documents.
17. Secretariat is grateful to 30 governments and 215 external contributors that participated in #EIRA2020 on a pro bono basis. The Secretariat in cooperation with Contracting Parties is revising EIRA scope and methodology. The ongoing review is expected to be finalised in 2021, including a self-standing indicator on Achieving Clean Energy Transition and a sub-indicator on Electricity Market Structure and Competition. Members

and Observers were invited to take part in #EIRA2021, with 15 countries confirmed by 1 December 2020.

18. In 2020, there was no investment report finalised because of the international travel limitations was impossible to secure seconded experts. **Investment promotion activities** (Activity 6) were related to the Investment Facilitation Toolbox. Based on the expressed interest of the delegation of Uzbekistan, the Secretariat conducted an introductory webinar and prepared a draft Action Plan. The implementation of the Investment Facilitation Toolbox was postponed to 2021 due to the COVID-19 pandemic.
19. As a part of deliverables under **Energy Efficiency and Related Environmental Aspects** (Activity 7) the Secretariat published the In-Depth Energy Efficiency Review of the Republic of Azerbaijan and started the development of the In-Depth Energy Efficiency Review of the Republic of Uzbekistan. The Secretariat also contributed to the EU4Energy activities related to the development of Energy Efficiency Law and the first National Energy Efficiency Action Plan (NEEAP) of Azerbaijan. In autumn, the Secretariat presented for discussion a document entitled *Role of the International Energy Charter in achieving a clean energy transition*. It was agreed to continue discussing the revised proposals that would address energy security and other energy sources in a balanced manner.
20. Secretariat's efforts under **Investment Dispute Prevention and Management** (Activity 8) through the *Conflict Resolution Centre* continued promoting the use of investment mediation at several webinars and virtual conferences (including UNCITRAL¹ inter-sessional meeting on the use of mediation in ISDS) and co-organised (with ICSID² and CEDR³) the joint accreditation training for investment mediators (this time taking place virtually). The International Energy Charter continues in the development of investment mediation and its 2016 Guide on Investment Mediation and the 2018 Model Instrument on Investment Dispute Management are referred as two basic tools.
21. COVID-19 implications hindered the technical assistance to governments to implement a document based on the Model Instrument. Similarly, the annual legal training and the joint Conference with ICSID/SCC⁴/PCA⁵ had to be postponed. The Conflict Resolution Centre, however, continued facilitating access to the "travaux préparatoires" of the ECT (under certain limitations due to COVID-19) and gave support, advice and assistance in dispute

¹ UN Commission on International Trade Law.

² International Centre for Settlement of Investment Disputes.

³ Centre for Effective Dispute Resolution.

⁴ Stockholm Chamber of Commerce.

⁵ Permanent Court of Arbitration.

resolution to states and investors. Finally, the Conflict Resolution Centre also participated in relevant discussions on investment dispute prevention (such as an event in February with ICSID and the World Bank on '*Innovative Strategies for Conflict Management: Improving Investor-State Relations to Propel Global Growth*'). The Secretariat maintained and updated from open sources, the statistics on the current 135 publicly known investment cases under the ECT (www.energychartertreaty.org).

22. In terms of **cooperation with Contracting Parties, Observers, International Organisations and Industry** (Activity 10) the Knowledge Centre organised the *2020 annual meeting and symposium of the CEC-ECS Joint Research Centre* in cooperation with the China Electricity Council. As part of its cooperation with academic institutions, an on-line lecture on the Energy Charter Treaty was organised for the students of the Faculty of Law of the University of Groningen. The Baku International Energy Charter Forum on the topic of "*Transition to renewables in power generation, transport, heating and cooling: modern challenges and trends*" was jointly organised with the Ministry of Energy of the Republic of Azerbaijan. The event brought together over 180 participants from 40 Member and Observer countries, international organisations, industry and academia to serve as a platform for policy dialogue and knowledge sharing. In October 2020, the Secretariat, OPEC and the OPEC Fund jointly organised for the second time a legal workshop titled "*Law of the Energy Transition*". This year, seventeen speakers representing industry, law firms, think tanks, international organisations and academia, discussed the legal and regulatory aspects of the energy transition.
23. The Investment Unit also continued to support the activities of the Industry Advisory Panel (IAP) based on its revised Terms of Reference and the renewed mandate up to 2024. As of 24 March 2020, Mr Rafael Cayuela (Dow Europe) replaced Mr Howard Chase, who was serving as the Chair of the IAP since its inception in 2004. The Secretariat convened a first IAP 2020 meeting in March in Tirana, Albania, hosted by the Trans Adriatic Pipeline. The main topics of the meeting included "*the future role of energy infrastructure*" and "*strategies and market rules for a climate-neutral energy sector*". The second meeting of the IAP is planned for December 2020 to be hosted on-line by SOCAR, Azerbaijan. IAP consists of 66 members from 33 countries; SolarPower Europe joined this year.
24. The Legal Unit provided necessary **legal support** (Activity 11) for smooth operations of the Secretariat, the Conference and its subsidiary bodies; in particular, taking into account the new challenges faced with the pandemic and the extensive use of new technologies.
25. COVID-19 Pandemics significantly altered **Energy Charter Process awareness' raising** of the Secretariat (Activity 12). Due to the postponing

- and cancelling of the most of external events in March-August period, the Energy Charter Secretariat's Newsletter in 2020 was limited to quarterly editions. The Modernisation process increased the public interest, and the Secretary-General provided multiple interviews and engagements with media, as well as some members of the European Parliament. Secretariat's officials and the Secretary-General participated in different on-line conferences, workshops and webinars promoting the International Energy Charter.
26. The Knowledge Centre continued to provide capacity building, awareness-raising and public outreach. It developed a *Training module on energy transit* delivered on-line to government officials of Mongolia, which was funded by the voluntary contribution from the UN Economic and Social Commission for Asia and the Pacific (UNESCAP) as part of its activities to strengthen sub-regional connectivity in East and North-East Asia.
27. All the work of the Secretariat was supported by **Financial and Administrative** Unit (Activity 13). Apart of recurrent internal administration, human resources management and relations with Belgian authorities the Unit was dealing with a regular independent external audit report of financial statements and on the regularity of the Secretariat's financial management and administration in 2019. The absence of the Assistant/Deputy Secretary-General created an 18 months long (and continuing) pressure on the financial and administrative management of the Secretariat. This was aggravated by considerable additional workload resulted from the preparation of multiple retrospective documents requested by delegates in the framework of Activity 1.
28. Different events led to the need of subsequent revisions of the Program of Work and the Budget for the year 2020, which created further burden to the Secretariat.

CONsolidation-EXpansion-Outreach (CONEXO) Policy in 2020

29. The development of the CONEXO policy and the implementation of deliverables under Activity 9 of the Program of Work for 2020 was significantly influenced by the Conclusions of the Review under Article 34(7) of the ECT and the subsequent decision of the Conference in December 2019. It should be recalled that Uganda notified the Conference of its formal request to accede to the ECT on 9 December 2019, the day prior to the 30th Annual Meeting of the Energy Charter Conference. However, on 10 December the Conference decided to institute a temporary pause on the commencement of formal accession processes and (to pause) on inviting countries to accede to the ECT until the thorough re-assessment of the CONEXO Policy would be finalised. As a result, Uganda's request for the

invitation was in 2020 postponed until further notice.

30. The Review of 2019 concluded that, during 2020, the CONEXO Policy should be thoroughly re-assessed through a review, including an assessment of its practical results and effectiveness. The Conference decided that the Secretariat's future efforts for expansion and outreach should be better defined and clarified in line with the strategic orientation to be provided. By its decision on the pause, the Conference effectively placed substantial limitations on the Secretariat's deliveries such as the completion of accession reports, supporting the accession process of countries already engaged in the ECT accession process, and signings of the International Energy Charter as foreseen by the Program of Work agreed in 2019. It should be recalled that those activities constituted the bulk of the Secretariat's efforts with CONEXO in previous years.
31. Additionally, in February 2020, delegates requested the Secretariat not implement any items under Activity 9 of the Program of Work for 2020 with the exception of some activities mainly funded by voluntary contributions. These included items relating to voluntary contributions from Nigeria (National Energy Summit March 2020), as well as cooperation with ECOWAS under the *Improving the Energy Governance in West Africa (AGoSE)* project on energy governance (capacity building activities, secondments March-May 2020), and a possible Secondment from Morocco for the purpose of updating Accession Reports. The impact of the COVID19 pandemic resulted in postponing those activities under further notice to 2021.
32. Bearing in mind the above-mentioned limitations placed on the Secretariat, our efforts during 2020 were focused on the implementation of the Conclusions of the Review 2019. In this context, the Secretariat prepared several documents (StG 141, 142, 143 and 148) intended to assist the Conference with its efforts to thoroughly review the CONEXO Policy in 2020. These documents facilitated substantial discussion during the June and October meetings of the Strategy Group, with a view to assisting the efforts of Contracting Parties' efforts to carry out their review of the CONEXO policy. While such discussions were to a large extent comprehensive, they were at the same time inconclusive, and the Review of the CONEXO Policy is set to continue in 2021.
33. Although the breakout of the COVID-19 pandemic resulted in the postponement of the National Energy Summit in Nigeria in March, cooperation between the International Energy Charter and the West African region continued to flourish. In March, a national expert from Benin took up a Secondment at the Secretariat to work on a technical report on energy efficiency, as part of the cooperation with ECOWAS under the AGoSE program. The secondment lasted for three months, resulting in a successfully delivered report and expansion of cooperation between Benin and the

International Energy Charter. The country is likely to express interest in yet deeper engagement with the Energy Charter Process in 2021.

34. Despite the limitations imposed by the pandemic, ECOWAS provided its non-objection to the extension of the implementation period for the remaining component of the voluntary contribution under AGoSE through to September 2021. On 10 November 2020, the Conference authorised the acceptance of such an extension. The AGoSE project is generating substantial interest in the Energy Charter Process in West Africa.
35. Another strong signal of endorsement of the Energy Charter process by the states of West Africa was reflected in the fact that ECT accession candidate country, The Gambia, submitted a request to assign an official from the government as a staff-on-loan to the Secretariat in April 2020. The Gambian Official was assigned to work on the EIRA profile of the Gambia, the model instrument for the management of investment disputes, as well as regional energy cooperation in West Africa. The Gambia completed its Accession Reports in 2019 and was considered one of the front running countries for ECT accession prior to the moratoria on accession adopted by the Conference at the end of that year.
36. The Secretariat spared no effort to work within the limitations placed on Activity 9 under the Program of Work 2020 in order to maintain effective contact with important countries and other actors engaged within the CONEXO Policy. I envisage that these efforts will continue and perhaps be somewhat expanded during 2021, bearing in mind also the manner in which restrictions on travel, meetings and gatherings caused by the COVID-19 pandemic may gradually begin to recede.

EU4Energy Project 2020

37. In 2020 the Secretariat completed the implementation of the EU4Energy Governance in Armenia, Azerbaijan and Belarus (Activity 14). This cooperation project was co-financed by the EU and the Secretariat. The main objective of the technical assistance provided was to assist partner countries in implementing policy recommendations developed by the Energy Charter Secretariat in recent in-depth energy efficiency or investment climate and market structure policy reviews; provide support to strengthening the existing legislative and regulatory frameworks in the areas of electricity and gas markets, energy efficiency and renewable energy. Partner countries played a key role in the prioritisation of areas of cooperation and their membership in the Energy Charter Conference enhanced the sense of ownership over the project.
38. The main project deliverables, submitted to partner countries in 2020 include: i) in Armenia a Roadmap for introducing requirements for Nearly-zero Energy Buildings, an Action plan for the development of Action plan and

Roadmap report to developing building energy performance calculation methodology and EIRA Monitoring report; ii) in Azerbaijan a draft National Energy Efficiency Action Plan (NEEAP) and a Roadmap for developing eco-design and labelling requirements for energy-using products and iii) in Belarus a Detailed overview of international and EU best practice requirements for the establishment and functioning of the national/regional natural gas markets; Policy recommendations to align natural gas legislative framework with best EU and international practices and EIRA monitoring report.

39. The implementation of EU4Energy Governance activities in Armenia, Azerbaijan and Belarus for the period 2017-2020 has been highly successful and greatly appreciated by main beneficiaries, EU Delegations and stakeholders in all three countries. The Energy Charter Secretariat has effectively managed to transform its already well-established relations with its member countries into practical cooperation, aimed at bringing the three countries closer to European values, including by aligning their energy and energy efficiency related legislation to the best EU practices. The total budget for implementing the project activities was 1,259,198 Euro, of which EU contribution was 1,116,980 Euro. In total, the project organised 40 country missions and 42 workshops, capacity building events and high-level roundtables with more than 1,170 total participants. Thirty-six draft legislative acts and technical reports were developed and presented to beneficiaries in partner countries.

Conclusion

40. In the extraordinarily difficult circumstances of COVID-19 pandemic during 2020, the Secretariat completed its functions as required by the Energy Charter Treaty.