

**ENERGY CHARTER
SECRETARIAT**

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Brussels, 24 June 1998

Related documents: CC 126, RD 40 (ECC of 23-24 04 1998, Informal Consultations of 18-19 05 1998, ECC of 24-25 06 1998)

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: **Adjournment of adoption of the Supplementary Treaty**

Delegations met in Brussels on 24 June 1998 to consider the adoption of the Supplementary Treaty.

The EC presidency on behalf of the member states underlined that the EC continues to support fully the Energy Charter process. However, they were unfortunately not in a position at the meeting to adopt the Supplementary Treaty. (The statement made by the EC presidency explaining the situation was circulated in Room Document 40 (attachment 1).)

In response to the statement, the Conference Chairman noted that he was sure that other delegations had listened to the statement with great disappointment, in particular as these delegations had come to this meeting fully prepared to proceed to the adoption of the Supplementary Treaty. The Chairman summarised the situation in the following manner:

He considered that all delegations continued their commitment to the Energy Charter process and in particular the Supplementary Treaty as envisaged in Article 10(4) of the Energy Charter Treaty.

He observed that significant progress has been made during the last three years in:

- (a) clarifying and making transparent the investment regimes of all participants in the negotiations;
- (b) achieving acceptance of a legally binding standstill to exceptions to national treatment/MFN in respect of the Making of Investments in the energy sector, which is very important for Investors;
- (c) elaborating the modalities of such a legally binding regime.

Keywords: Supplementary Treaty

He noted that negotiations were 'concluded' in December 1997 and that his assessment was that only very few issues required further reflection but seemed not to be insurmountable.

The Chairman further noted that he would continue to be in contact with delegations and call informal meetings to find agreements which would allow adoption of the Supplementary Treaty. He further interpreted the EC statement as willingness to conclude the adoption before the end of the year. The Chairman would then on the basis of contacts with delegations and informal meetings in due course reconvene the Adoption Conference.

The EC presidency had in its statement indicated that new proposals might result from their continued consultations. The Chairman urged the EC as well as other delegations that might have proposals to make to submit such proposals as soon as possible.

[Attached is the EU presidency speaking note as contained in Room Document 40 of 24 June 1998.]

EU Presidency Speaking Note

Let me underline with utmost emphasis that the European Union (EU) continues to support fully the Energy Charter process. However, we are unfortunately not in a position today to adopt the Supplementary Treaty (ST) to the Energy Charter Treaty (ECT).

The EU recognises that many delegations came to the conference with the intention of adopting the ST text. So we realise that we owe you, Mr Chairman, and all delegations an explanation.

I can report that within the EU there was a strong feeling that it should have been possible to reach agreement at this Conference. However, at the end of our internal process we had to recognise that there were serious hesitations at the political level in some EU countries about adopting the text at this moment. I know this will be a disappointment to many, as it is to me personally. These hesitations are a reflection of a political climate in which various interested parts of society, including labour and environment interests, wish to be heard more fully before governments conclude negotiations on an agreement liberalising investment. Wide consultations are taking place and new proposals might result.

A further, rather different, longstanding aspect is the fact that a few non EU delegations still have hesitations on substantive issues in the ST, or are reluctant to commit to a timeframe. This creates additional hurdles for the EU in reaching an acceptable outcome.

Let me repeat that no member of the EU wishes the current problems to undermine or call into question the importance we attach to the ECT, or our desire to complete the two outstanding ratifications and see ratification by non EU delegations. You will recall that the EU has demonstrated its commitment by provisionally applying the ECT where national constitutions allow. Also we do not question the importance of the ST or the need for its early adoption. We emphasise our desire to continue working to resolve outstanding issues, both within the EU and with other ECT partners. We hope and believe that significant progress towards adoption of the ST can be made before the end of the year.