

ENERGY CHARTER SECRETARIAT

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Related documents: CC 349 Rev. 1, CC 351, CC 353, CC 354, CC 357, CC 362, CC 368

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Reports submitted to the 19th Meeting of the Energy Charter Conference held on 28 November 2008

- [*The Conference took note* of report of the Ad Hoc Strategy Group (as in document CC 349).]

The Chairman of the Ad Hoc Energy Charter Strategy Group informed the Conference about the work of the Group in respect to the preparation of the report over the two meetings during the year. He noted the emergence of new issues in the energy sector since the signing of the Charter and the ECT: climate change; energy security and the unprecedented extent of investment needs. These challenges have been further aggravated by the global financial crisis. The group reiterated the need for transparent rules for the transit of energy, and confirmed the role of energy efficiency as a tool to improve energy security, to reduce environmental impacts and enhance competitiveness. Another area of attention was the impact of structural reforms as part of energy reforms in the ECT constituency. It was felt in the Group that the Energy Charter process was a unique legal framework and an important policy forum for tackling these challenges.

The Group concluded that the Energy Charter should concentrate on the Treaty's core tasks and strengthen existing provisions in these areas. The Group reaffirmed its support for the finalisation of the draft Energy Charter Protocol on Transit. It was felt that the PEEREA could have a more visible role and that the Energy Charter process could make a useful contribution to the challenge of combating climate change.

The function of the Energy Charter process as a policy forum, including through the work of the Ad Hoc Strategy Group, was welcomed. It was felt that a targeted

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enlargement of the Energy Charter constituency should be pursued and that cooperation with other international organisations working on energy issues should be strengthened and the duplication of work avoided. The Group proposed that its findings should be taken into account during the 2009 Energy Charter Review. It was further proposed that the Group continue to operate in 2009, including in coordination with the Review.

The Group Chairman noted that in respect to the issue of the activities of the Ad Hoc Strategy Group in 2009, it would be useful to have Terms of Reference or a mandate for future work.

The Conference welcomed the AHSR report as a basis for the further work of the Conference and its subsidiary bodies and also as a reference for the Energy Charter Review to be conducted in 2009 under ECT Article 34(7).

A second point was that the Conference agreed that the group will continue its work in 2009. The Chairman called upon the Secretariat to circulate Terms of Reference in line with the proposals contained in the AHSR report and the comments made by delegations, as well as by the Chairman of the Group in the preceding discussion.

- [***The Conference welcomed*** the Report by the Chairman of the Investment Group as presented in document CC 351.]

In April 2008, the Group heard a special presentation by Moldova on the application of investment policy reform and on investment priorities for the energy sector in the country. At the same meeting, a representative of UNCTAD provided information about investment arbitration and the experiences of UNCITRAL-based arbitration. The Secretariat presented to the Group commentaries on the current arbitration investment cases and Turkey presented its recent experience in respect to a number of investment disputes.

The main conclusions reached in the conference “The Energy Charter Treaty: Energy Security, Investment Protection and Future Developments” co-organised by the Secretariat, the British Institute of International and Comparative Law and the Arbitration Institute of the Stockholm Chamber of Commerce in London in September 2008 were also highlighted:

“With a view to achieving consistency of international arbitral decisions in ECT investment arbitration proceedings, arbitral tribunals, States, and investors involved in such arbitration proceedings are encouraged to exchange information, through the Secretariat, concerning substantive and procedural aspects of such proceedings likely to be of general interest. It is moreover recommended that the Secretariat continue its activities aimed at increasing the knowledge about investment arbitration, including the regular organisation of conferences and seminars on the topic, as well as inviting other speakers to future Investment Group meetings.”

The Group Chairman also highlighted the Group’s work in respect to the Risk Reduction Dialogue, where the focus was on the issue of underground gas storage. The delegate of Italy highlighted the advanced experience of his country in this area. A draft paper on carbon capture and storage was presented to the Group with the aim that it should be finalised in 2009.

The issue of reciprocity in investment and market structure was considered, with presentations from guests invited to the Group. The particular focus was on the

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Russia-EU energy relationship. These discussions served as the basis for the production by the Secretariat of a paper on reciprocity presented to the Group in October 2008. The Group also considered recent developments in exceptions to national treatment and reducing remaining country-specific exceptions in the Blue Book. The Group sought to strengthen its dialogue with the business community through cooperation with the Industry Advisory Panel.

- [*The Conference welcomed* the report of the Group on Trade and Transit as presented in document CC 353.]

The Group continued to organise energy pricing seminars in member states, and also produced a report on “Taxation along the Oil and Gas Supply Chain”. The Group analysed the role of underground gas storage for reliable transit and continued its Transparency Initiative on ongoing cross-border gas pipeline projects, as well as its work on promoting regional electricity cooperation in Central and South Asia by holding another meeting of the Task Force on Regional Electricity Cooperation in Central and South Asia in Tajikistan. Additionally, the Group produced a report “Fostering LNG Trade: Role of the Energy Charter”. The Chairman also touched upon the Group’s deliberations on technology transfer and the report on trade conditions for clean and efficient energy technologies. Finally the Chairman noted that the Group was effective in responding to requests from member states and to major developments in energy markets, and that the practice of holding one of the Group’s meetings in member states every year had proven useful in building closer ties and promoting better understanding within the organisation’s constituency.

- [*The Conference welcomed* the report of the Group on Energy Efficiency and Related Environmental Aspects as presented in document CC 354.]

The report highlighted the benefits of the new approach to hold the Group’s meetings in ECT member countries in conjunction with broader international events. The Group’s meeting in May 2008 was held in Geneva and was followed by the Energy Charter’s annual policy conference “International Cooperation on Energy Efficiency: Working Together for a Low-carbon Economy”. The October meeting of the Group was organised in Sofia and was linked to the international conference “Implementing Energy Efficiency Policies – National and International Opportunities”. The meetings received substantial support from the host authorities and benefited from cooperation with national and international agencies.

With respect to the Group’s cross-cutting activities, the report noted two new studies produced in 2008: on energy efficiency standards and labels; and on energy efficiency in the public sector. The Group also commenced work on energy efficiency institutions covering strategy setting, legal frameworks, institutions and review process. In 2009 the Group will also study ways in which such economic instruments as ‘white’ and ‘green certificates’ could be employed in developing economies and economies in transition. Finally, the Group will continue to integrate the Energy Charter’s expertise in global climate change discussions and will further promote international cooperation on energy efficiency.

- The Conference took note of the Financial Statements and the Auditor’s Report of 2007, as circulated in document CC 357, and approved the recommendation of the Budget Committee to discharge the Secretary General from his management and

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administrative responsibility in respect to the 2007 Budget, in accordance with Article 32(4) of the Financial Rules.

- [*The Conference took note* of the Secretary General's Report on the Relations with Non-Member States as contained in document CC 362.]

The new economic context presents new challenges for the Energy Charter constituency and highlights the issue of a slowdown of energy investment, ageing infrastructure and the rising costs of exploration and exploitation – thereby raising the prospect of insufficient medium and long-term investment when the global economy begins to grow. The Secretary General noted that this global challenge underlines the need for international rules, notably the Energy Charter Treaty – which addresses the full energy chain and conflict resolution, and unites 51 countries from Asia, Europe and the Mediterranean. Moreover, the Energy Charter Treaty, uniquely, brings together producers, transit and consumer countries.

The Secretary General argued that there was a need to restore and strengthen investor confidence. Here the ECT could play a key role. He underlined that the new energy challenges were reflected in the Work Programme for 2009, while the 2009 Policy Conference, to take place on 28th May in cooperation with the European Investment Bank, would address the issue of investment in energy markets. In 2008, the Ad Hoc Strategy Group focused on future challenges and how the Energy Charter process and its instruments can respond to the shifting needs of its constituency. The Secretary General noted that the Group was prepared to continue its work, if supported by the Conference. The 2009 Energy Charter Review will ensure that the interests of the member states are looked after during a challenging period.