

**ENERGY CHARTER
SECRETARIAT**

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Related documents: CC 391, CC 393, CC 394, CC 396, CC 399, CC 400, CC 404, CC 407
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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Reports submitted to the 21st Energy Charter Conference meeting held on 24 November 2010

- The Conference *took note* of the Financial Statement and the Auditor's Report of 2009, as circulated in document CC 391, and approved the recommendation of the Budget Committee to discharge the Secretary General from his management and administrative responsibility in respect to the 2009 Budget, in accordance with the Article 32(4) of the Financial Rules.
- [*The Conference took note* of the Trade and Transit Group Chairman's report on the activities of the Trade and Transit Group in 2010 circulated to delegations as document CC 393.]

He informed the Conference of the Group's work on promotion of the implementation of the Energy Charter Treaty's Trade and Transit provisions. He welcomed the entry into force of the Trade Amendment to the Energy Charter Treaty, which opened up prospects for member countries for further cooperation. The Trade Amendment modified the Energy Charter Treaty's trade provisions and was in line with the rules and practices of the World Trade Organisation. The Trade Amendment also expanded the Treaty's scope to cover trade in energy-related equipment and set out a mechanism for introducing in the future a legally-binding standstill on customs duties and charges for energy-related imports and exports. The Group discussed the implications and possible follow up resulting from its entry into force.

The next priority outlined in the ECT trade regime by the Chairman of the Group related to the decision to move to a bound tariff regime, which required a unanimous decision of the Conference. The Group had concluded that in order to move the process forward, the meeting of the trade experts should be convened in 2011 to

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clarify positions and to prepare a Conference decision on this point. The Group Chairman also noted that despite its entry into force, further ratifications of the Trade Amendment should be encouraged, especially by non-WTO member countries. Within this framework, the Secretariat had cooperated with the WTO Secretariat in preparation for the World Trade Report devoted in 2010 to trade in natural resources, and the Group had heard the presentation of the WTO representative on the main findings of the Report with respect to energy.

Under the “Transparency Initiative” the Group had continued facilitating voluntary presentations on various pipelines, including: the Greifswald-Balgzand Gas Pipeline Project; the Polish section of the Yamal-Europe pipeline; the CNPC presentation on China’s cooperation with Russia and the Central Asian countries; the role of ENTSOG, the new European Network of Transmission System Operators for Gas; and the priorities of the International Gas Union.

The Group’s discussions on enhancing regional cooperation between the neighbouring economies in Asia were welcomed by the Group Chairman. He also welcomed the outcomes of the 6th meeting of the Task Force on Regional Energy Cooperation, held in Ulaanbaatar, Mongolia, in mid 2010. That meeting with participation of the delegations from Afghanistan, China, India, Japan, Kazakhstan, Kyrgyzstan, Korea, Mongolia, Tajikistan and Uzbekistan had discussed topics of common interest, including the latest developments in the electricity and coal sectors of participating countries, and had agreed a declaration containing the recommendation to the Conference to develop model investment agreements for investing in the energy sector on the basis of Energy Charter principles.

The Group Chairman referred to the obligation in accordance with the previous year’s decision by the Conference in Rome to report on the progress made towards the finalisation of the draft Transit Protocol. The first meeting of the Group in February 2010 had been used for the technical preparation of the negotiations. The Group had agreed on an amendment proposal for its Terms of Reference, which was later approved by the Conference by written procedure, also circulated as document CC 393. Although the Group had agreed on the negotiation guidelines and on the starting text for the negotiations and envisaged first concentrating on the remaining open issues, the negotiations had been postponed both in June and later in October upon the request of several delegations in order to have more time to prepare their positions.

The importance of concluding negotiations on the Transit Protocol was stressed, as the issues related to transit remained major challenge for the growing cross border trade of energy. The Group Chairman expressed the intention of the Group to continue its work under the mandate received in Rome for formal negotiations on the remaining open issues of the draft TP with a view to an expeditious conclusion of such negotiations, and called for clarification on the relationship between the Transit Protocol and Regional Economic Integration Organisations. He also made reference to the possibility of enlarging the constituency to include countries in North Africa and including additional issues referred to in footnotes in the draft Transit Protocol.

The Conference took note of the Trade and Transit Group Chairman’s report on the activities of the Trade and Transit Group in 2010 circulated to delegations as document CC 393. The Conference also welcomed the entry into force of the Trade Amendment [...]

- [*The Conference took note* of the Strategy Group Chairman's report as contained in document CC 394.]

[...] In accordance with the outcome of the 2009 Energy Charter Conference in Rome, the Group had discussed the Terms of Reference of the Strategy Group in February, which had been its last meeting in the format of the Ad Hoc Strategy Group. The Group Chairman noted that those Terms of Reference, giving the Strategy Group a broad mandate to discuss policy and horizontal issues, had been approved by written procedure in March 2010.

The importance of the Strategy Group as a forum for discussing policy and strategic issues was stressed by the Group Chairman. He outlined the issues covered by the Group in 2010, which included; the priorities of the Spanish and Belgian EU Presidencies in 2010, the latest changes in the organisational structure of the services of the European Commission, the accession of Moldova and Ukraine to the Energy Community Treaty, work carried out by Albania as an Energy Community member, the Joint Declaration by the Norwegian and Russian Governments concerning the bilateral delimitation in the Barents Sea and the Arctic Ocean, energy policies and the energy administration of the People's Republic of China, the results of the 12th IEF Ministerial in Cancún, Mexico, in March and of the APEC Energy Ministers' meeting in Fukui, Japan, in June, as well as cooperation with UNECE and the OSCE.

He then went on to outline the Group's discussions on the development and implementation of the Energy Charter's enlargement policy, expansion and outreach, which had also examined cooperation with other international organisations, as well as legal challenges related to expansion. He stressed that these discussions would continue within the framework of the Road Map for Modernisation, dedicated to the promotion of the Energy Charter and the Energy Charter Treaty.

In relation to the Strategy Group's work on the Secretariat's Programme of Work for 2011, the main Policy Areas for the Programme of Work, had been presented at the October meeting. They were then used for the preparation of the Detailed Activity Schedule of the Secretariat for 2011. The Group Chairman noted that the Group's concrete proposals for enhancing the role of the Strategy Group with regard to the preparation of the Programme of Work, were included in the Road Map for Modernisation. [...]

- [*The Conference took a note* of the Investment Group Chairman's report as contained in document CC 396.]

The key activity areas in which the Group had advanced policy discussions were emphasised with particular focus on the policy conclusions of Country Reviews on Investment Climate and Market Structure (ICMS). The assessment of the investment climate and market structure reviews since the adoption of the Energy Charter Treaty demonstrated that significant progress could be observed in reforming the investment regimes of the ECT members. Countries accessed through this process had enhanced the levels of liberalisation of investment rules, had set up transparent and conducive investment regimes, and had actively engaged in investment promotion and facilitation. This achievement was attributed to the Group's open and transparent discussions on non-compliance, peer pressure generated through the review process, and conference endorsement of recommendation for full compliance.

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The next key activity outlined by the Group Chairman was the Group's focus on improving overall transparency in the energy sector and the Group's initiative in updating the Energy Charter Transparency Document, within which ten countries had provided updated information on Enquiry Points, in accordance with Article 20 of the Treaty on Transparency. [...]

Within the framework of Risk Mitigation Dialogue, the Group had discussed issues related to the investment arbitration under the ECT and developments in this field, mainly in relation to pending cases. Both the Member States and the business sector underlined that the arbitration related provisions of the ECT were indispensable and constituted one of the most important features and strength of the Treaty.

Concluding his report, the Group Chairman emphasised the crucial importance of maintaining close ties with energy industry representatives. He outlined the Group's work with the Industry Advisory Panel, enhancing the dialogue between public and private sectors and discussing the recommendations provided by the IAP members for the improved functioning of the energy markets.

- [*The Conference took note* of the Industry Advisory Panel's recommendations as contained in document CC 399.]

In his report, the IAP Chairman outlined the focus of IAP activities on the policies required to secure adequate, timely and affordable energy supplies. He reflected on the outcome of the IAP proceedings related to the issues of global energy resources availability and pricing, international coal markets, assessment of the Copenhagen summit, oil market volatility, the Norwegian oil and natural gas industry, challenges of Arctic resource development, transparency in the extractive industries, the impact of the Gulf of Mexico accident, energy infrastructure development in the EU, application of the investment protection provisions of the Energy Charter Treaty and the strategic development of the Energy Charter. [...]

The IAP Chairman highlighted the outcome of the BP Statistical Review for 2009 on the energy resource availability. However, major investments would be required in all parts of the energy supply and distribution chain to ensure future continuity of supply. The principal risks to primary energy supply remained 'above the ground' in terms of access, investment and political factors and not 'below the ground' in terms of reserves or technology. Panel Members had consistently drawn attention to the investment protection provisions of the Energy Charter Treaty as an important and indispensable reference point for the security of international energy investment. For this reason, the IAP would continue to follow the work of the Investment Group in the area of investment protection with particular and close interest.

The recent analysis by the Investment Group of expropriation laws in a number of selected countries within the Energy Charter constituency had supported the view that the Energy Charter Treaty provisions on expropriation were an important complement to domestic legislation in ensuring international coherence in the protection of energy investments.

The IAP Chairman stressed the IAP's support for the Charter Process and the principles of the ECT in the context of the modernisation and noted that from an industry perspective the value and importance of the Energy Charter framework for the protection of energy investment and the provision of secure energy transportation and transit remained unchanged. Cross-border transportation of energy was still widely subject to regulatory obstructions. Given that there was no other multilateral

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process in place to deal with energy transit issues, the Energy Charter Treaty remained of particular relevance in this respect.

Concluding his report, the IAP Chairman outlined the programme for IAP work for 2011, with three scheduled meetings in Brussels (hosted by the Charter Secretariat), Prague (on the invitation of CEZ) and Baku (on the invitation of SOCAR).

[...] The Conference Chairman asked the Secretariat to incorporate IAP findings in the relevant Energy Charter activities.

- [*The Conference took note* of the report of the PEEREA Working Group Chairman as contained in document CC 400.]

The report noted an important milestone for the Working Group in 2010: the completion of the three year project on Energy Efficiency Institutional Frameworks, including extensive analytical work, updated overviews and good practice on energy efficiency strategies, policies, measures, organisations, legal frameworks, monitoring and reporting mechanisms in the Member States, findings of which were presented and comprehensively debated by delegates in Working Group meetings in 2008, 2009 and 2010.

With respect to the Group's cross-cutting activities, the report outlined the Group's work on Institutional Frameworks for Energy Efficiency, under which an overview and analysis of existing Institutional Frameworks in the Member States had been developed in 2010. At its November meeting, the Group had held a panel discussion based on the findings of the study undertaken. The panel, composed of representatives from the European Commission, Russia and the Ukraine and moderated by Professor Alan Watt from the Central European University in Hungary, focused on the discussion on formulating the main issues influencing the effectiveness of energy efficiency institutional mechanisms and frameworks as well as the most appropriate policy approaches best suited to specific national circumstances. These discussions highlighted a number of areas for further attention. The conclusions drawn from these discussions showed the slow progress in some sectors represented great potential for energy efficiency improvements, most notably in the building sector, accounting for over 40% of primary energy use globally, where there is a significant potential for energy savings, and recommended further work to be continued through the next year's programme of work for the PEEREA Working Group.

As for the Energy Efficiency Policy Regular Country Reviews, the Hashemite Kingdom of Jordan was the first observer country to prepare a regular energy efficiency review. The representative from the National Energy Research Centre of Jordan had presented the regular energy efficiency review of Jordan during the May meeting of the PEEREA Working Group.

Serbia and the Palestine National Authorities had also produced energy efficiency policy reviews highlighting the latest developments in the energy sector, energy efficiency policies, strategies incentives and international cooperation activities as part of their accession procedures, the outcomes of which were presented and discussed during the PEEREA Working Group meetings.

- [*The Conference took note* of the Secretary General's Report on the Relations with Non-Member States as contained in document CC 404.]

[The Secretary-General] referred to the continuous trend of rapid changes in the energy sectors globally, and discussed the importance of multilateral cooperation in the volatile world of energy. He referred to the earlier discussions on the Road Map for the modernisation process and stressed that the expansion of the Energy Charter remained a key component of the modernisation of the Energy Charter Process.

The Secretary General thanked the representatives from non-member countries for their participation in the Energy Charter Process, and called for stepping up of their engagement for the benefit of predictable, diversified, secure and transparent energy markets. He thanked the Member States for their support for the expansion process and encouraged them to continue promoting the Energy Charter Process in relevant international fora.

The Syrian Arab Republic's observer status was welcomed. Syria had become the 24th Observer by signing the 1991 Energy Charter on 28 June 2010. The Secretary General emphasised the significance of the Mashreq Region for energy and outlined the importance of the Syrian Arab Republic's participation in the Energy Charter Process.

- [*The Conference took note* of the report of the Chairman of the Budget Committee.]

The Chairman of the Budget Committee, Mr Yrjö Sahrakorpi, reported on the results of the Budget Committee meeting, which took place on 28 October 2010. With respect to the collection of contributions, he stated that there were still a limited number of arrears from the period 2004 to 2009, and a further thirteen outstanding contributions related to 2010. The Chairman informed the Conference that the overall situation was satisfactory, but urged those delegations with outstanding contributions to settle their financial obligations as soon as possible.

- Succession of the Secretary General of the Energy Charter Secretariat (Message 912/10)

The Chairman informed the Conference of the Secretary General's intention not to seek further extension of his mandate, which would therefore expire on 31 December 2011, as circulated to delegations as Message 912/10.

The Chairman thanked the Secretary General for the highly professional cooperation and leadership he had brought to the Energy Charter. He then outlined the process that the Conference should undertake for designating a successor, to take office from 1 January 2012. The Chairman expressed his commitment to a fully transparent process in this respect.

The Conference Chairman recalled the procedure for designating the Secretary General, approved during the 5th Meeting of the Energy Charter Conference in June 2000, as contained in document CC 164. The Conference Chairman initiated the formal procedure to designate the successor to the Energy Charter Secretary General, and noted his intention to address Energy Charter members concerning nomination of candidates before 3 May 2011.