

**ENERGY CHARTER
SECRETARIAT**

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Related documents: CC 499

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Report by the Chairman of the Investment Group

The Energy Charter Conference at its 25th Meeting held on 26th November 2014 **took note** of the Report by the Chairman of the Investment Group as contained in document CC 499 (attached hereto).

Keywords: Report, Chairman, Investment Group

Report by the Chairman of the Investment Group

1. This report provides an overview of the activities of the Investment Group in 2014. The Investment Group convened twice in 2014: on 4 June and on 22 October in Brussels. The first meeting was chaired by Dr. Klara Rakhmetova (Kazakhstan) Vice-Chairperson, and the second meeting was chaired by Mr. Steivan Defilla (Director, Energy Charter Secretariat) in substitution of the Vice-Chairperson.
2. The activities of the Investment Group contributed to the implementation of the activities promoting and protecting foreign investment in line with Area D of the Programme of Work 2014 (CC 476) and with Area D of the Road Map for the Modernisation of the Energy Charter Process (CC 402). The activities within the Investment Group offered a dynamic forum for delegations to raise awareness and consider improvements to the investment dispute settlement system, promote low carbon investments and disseminate best practices, peer-review domestic investment climate and market structure, identify exceptions to non-discrimination of investment. A short summary with conclusions and recommendations of the addressed topics, along with outlook for future activities is presented below.

Improving Dispute Settlement under Art. 26 ECT

3. At the 24th Meeting of the Energy Charter Conference in Nicosia on 5 December 2013, the Secretary General proposed several measures for improving the investment dispute settlement mechanism under Article 26 ECT. Following the suggestion of the Coordinators of the Review under Article 34(7) ECT, the Strategy Group agreed that the proposals of the Secretary General would not be included in the review questionnaire and would be discussed by the Investment Group instead.
4. The Scoping Paper on Proposed Measures for Improving Investment Dispute Settlement under Article 26 ECT (IN 123) illustrated the background of the proposal on the basis of the current international debate, and was enriched by the direct contributions to the discussion from UNCTAD, UNCITRAL, and OECD. The paper described specific criticism to investment dispute settlement system and suggested measures to improve it: transparency; interpretation; dismissal of frivolous claims; costs; conciliation; appeal mechanism; permanent investment court. The Investment Group appreciated the proposal by the Secretary General and the work by the Secretariat, and supported further work of the Secretariat in this field with priority to transparency, interpretation, frivolous claims, costs, conciliation and mediation, multiple claims.
5. Based on this and on the semi-annual report of Kazakhstan (Message 1154/14), the Secretariat prepared a discussion paper on the Energy Charter Investment Ombudsman as an Instrument to Promote and Protect Energy Investments (IN 127). The paper presented the objective, the role and the structure of a possible Energy

Charter Investment Ombudsman, considering the practice of some members of the Energy Charter Conference. The Investment Group welcomed the proposal and invited the Secretariat to further clarify the role of the Ombudsman. Delegations also invited the Secretariat to prepare a proposal on how to make an effective communication on denial of benefits under Article 17 of the ECT.

6. In 2015 the Investment Group will discuss transparency and alternative dispute settlement mechanisms (Ombudsman, conciliation and mediation).
7. In anticipation of the collection of case summaries and bibliographic references drafted by the Secretariat with a view to the in-depth analysis of investment dispute settlement under the Treaty (including analysis and provisional conclusions), the Investment Group welcomed the presentation of the summary analysis of the recent arbitral awards on the cases brought by the former Yukos shareholders against the Russian Federation.
8. In 2015 the Investment Group will oversee the completion and publication of the summaries of the arbitral awards decided upon up to 2014 and will draft summaries of the arbitral awards decided in 2015.
9. In order to raise awareness, facilitate capacity building and exchange information and experiences among government experts on the management of investment disputes and of the dispute settlement system, the Investment Group supported the initiative that the Secretariat should coordinate and assist an informal network of government experts in dispute settlement under the ECT.

Low-Carbon Investments

10. The Investment Group discussed a draft statement on promoting low-carbon investment, based on the mandate of the Energy Charter Conference (CC 440) and on the assessment of the ECT provisions with regard to low carbon investment (CC 439). The Secretariat prepared a draft statement supporting low carbon policy options and a draft statement clarifying certain provisions under the ECT in relation to promoting low-carbon investment (IN 122). The discussion was enriched by the presentation by OECD of the study on Policy Guidance for Investment in Clean Energy Infrastructures, delivered to the G20 summit in 2013.
11. The Secretariat provided additional information on the main objective of a public statement on promoting low carbon investment and trade in relation to (a) the assessment the provisions under the Energy Charter Treaty on low carbon investment; (b) the call for an increase of low carbon investments; (c) multilateral cooperation; and (c) increasing number of investment disputes challenging low carbon policies. The Investment Group discussed a non binding draft public statement promoting low carbon investment and trade to be adopted by the Energy Charter Conference (IN 125) and requested the Secretariat to clarify the scope of the public statement and to focus on its legal aspects.
12. The Investment Group received the presentation on the Portuguese and on the Greek reform of subsidies to wind energy. The Portuguese government renegotiated in 2013 the feed-in tariff granted to independent wind power producers so as to reduce the

tariff debt without undermining the investment climate. The Greek government reformed between 2012 and 2013 the subsidies for renewable energy sources (RES). In order to reduce the tariff debt, the Greek government readjusted the existing tariff rates, suspended new projects and introduced special duties. In 2014, the tariff flow was normalised with a tariff reduction for a longer duration in order to preserve the stability and viability of investments.

In Depth Review of the Investment Climate and Market Structure in the Energy Sector of the Republic of Armenia

13. In 2014 the Republic of Armenia presented the in-depth review of the Investment Climate and Market Structure (ICMS) in the energy sector (ICMS 66). The review was prepared by the Ministry of Energy and Natural Resources in close cooperation with the Energy Charter Secretariat. Peer review expert from Lithuania revised the draft report. Another substantive revision was done by peer review expert from Albania and by experts of the Secretariat who visited the Republic of Armenia in April of 2014 for discussions with the government agencies, utility companies, investors and international financial institutions. The review was complemented by policy conclusions and recommendations drafted by the Secretariat (ICMS 67).
14. The Government of Armenia has been successfully progressing with institutional and structural reforms aimed at liberalising the energy sector which has led to a better investment climate for investors. Armenia has a well established and functioning energy sector with stable energy supply and services extended to all local population and economy sectors. The implemented reforms have created a solid basis for future development. Over the last five years domestic and foreign investment in larger-scale energy infrastructure has been increasing. Both national gas supply and electricity networks have been improving since the beginning of power sector reform.
15. Among key policy recommendations, the Investment Group invited the Armenian Government to continue reform, to improve competition and interconnections in the energy sector, to further support the development of energy efficiency and renewable energy, to consider participation in a regional task force for regional electricity markets and natural gas transportation.
16. In 2015, the Investment Group will undertake a comprehensive review of the content, process, objectives and targets of the ICMS reports.

Improving Entry Conditions for Foreign Investors

17. In 2014 the Investment Group agreed and launched the questionnaire for the comprehensive review of the Blue Book. The purpose of the comprehensive review of the Blue Book is to identify existing instances of non-compliance with the National and MFN Treatment principle; limit them to the minimum; and progressively remove existing restrictions affecting Investors of other Contracting Parties.
18. In 2015 the Investment Group will finalise the collection of the results of the comprehensive review and will discuss the results of the review and if required formulate policy recommendations for endorsement by the Charter Conference in 2014 or in 2015. If the comprehensive review shows that there are still several discriminatory measures in the pre-investment phase, the Investment Group may discuss the possibility of resuming negotiations of a Supplementary Treaty (SP). A reduction in the number of exceptions to National and MFN Treatment would improve entry conditions for foreign investors and contribute to establishment of a level playing field in the energy sector. The Investment Group will also start considering the development of a methodology to identify and discuss less obvious and more complex non-discriminatory barriers specific to investments in the energy sector.