

**STATEMENT ON BEHALF OF
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ENERGY CHARTER SECRETARIAT**

MEETING OF THE ENERGY MINISTERS OF THE
ORGANISATION OF THE BLACK SEA ECONOMIC
COOPERATION (BSEC) MEMBER STATES

THE BENEFITS OF THE ENERGY CHARTER TREATY
AS A BASIS FOR REGIONAL COOPERATION IN THE ENERGY SECTOR

KIEV 9 APRIL 2008

The Energy Charter Secretariat (ECS) is very grateful for the opportunity to address this ministerial meeting of the BSEC. Unfortunately, the Secretary General is not able to participate himself due to a number of prior commitments conflicting with this event. He sends his best wishes for a successful meeting.

The ECS congratulates Ukraine for its choice to address the issue of energy cooperation during its presidency of the BSEC. This conference is a very welcome event for the Energy Charter Secretariat given that 11 out of the 12 members of the BSEC are already signatories of the legally binding Energy Charter Treaty, and Serbia is a part of the Energy Charter process as a signatory of the Energy Charter Declaration of 1991.

In my intervention I would like to outline the role that the Energy Charter Treaty and the Energy Charter process can play in providing further impetus for the development of energy cooperation of BSEC member states.

Energy trade across borders is becoming increasingly important on a global scale and the Black Sea region is a vital geographic crossroads for the trade of oil and gas in particular. Due to their geographical location, the countries of the BSEC constitute a region with some of the highest existing cross-border energy and transit flows by fixed infrastructure. The region is also host to a multitude of new energy infrastructure projects. In addition, the Black Sea is a region with a high demand for investment in the energy sector, be it for the production and transport of fossil fuels or for electricity generation and distribution. It is certainly also a region with substantial potential for energy efficiency, and it offers substantial benefits for cooperation in the field of energy technology.

The Energy Charter Treaty is a unique legally binding multilateral instrument designed to protect the stability of long-term energy investment and trade decisions against undue political interventions. It creates a level playing field for its members and their industry by establishing the basic standards of non-discriminatory treatment and protection against breach of investment contracts. An especially helpful feature is its dispute settlement mechanism which focuses on amicable solutions, but also offers

enforceable dispute settlement mechanisms as a last resort. It thus helps to create investor confidence as well as greater security amongst trading partners tied by long-term arrangements.

While the Energy Charter is often associated with gas and oil projects, it covers all energy materials and products, which explicitly include electricity.

All signatories of the ECT – and its BSEC members in particular – thus already have a joint fundament of binding rules on which more specific agreements on a project basis or regional basis can be built, be it for oil, gas or electricity.

By providing a joint basis for a sound legal and contractual structure for cross-border projects, the Energy Charter Treaty provides a level playing field for countries and investors. This implies that the Energy Charter is NOT a process to judge or even select specific projects. It must be left to the respective project participants to come to the decision of what serves their interests best. However, the Treaty encourages its members to create as much transparency as possible by presenting on a voluntary basis the main economic, legal and regulatory features of upcoming projects in their area to the other member countries within the framework of the organisation's committee structure.

While the provisions of the ECT already provide (in Art. 7(6)) for a conciliation procedure in case of problems with transit flows, we believe that it would be useful to reduce the potential for conflict over existing energy flows, especially gas flows, by creating a better mutual understanding on the operational aspects of cross-border gas flows as well as transparency on actual flows. We welcome the recent presentation by Ukrainian experts explaining the major features of the Ukrainian gas system to a wider audience in Brussels. This is a good starting point to involve more participants in the region to create a common understanding on the operation of cross-border systems.

Alongside the enforceable disciplines included in the Treaty, the Energy Charter is also involved in developing non-binding instruments that can facilitate cooperation among member states. I would particularly like to draw your attention to the Model Agreements on cross-border pipelines. These consist of a model Inter-governmental Agreement, between participating states, and a Host Government Agreement, between an individual state and project investors, which provide examples of best international practice that can be used as a balanced point of reference when negotiating specific cross-border pipeline projects.

The involvement of the Energy Charter with the subject of regional cooperation is so far in its beginning. The Energy Charter is promoting regional cooperation in the electricity sector in Central Asia and with South Asia. This initiative was started in May 2007 with a conference in Bishkek, Kyrgyzstan. It brings together representatives of Central Asian and South Asian countries on a regular basis to

develop the potential of cross-border electricity trade and further regional electricity cooperation between the hydro-rich countries and the fossil fuel-rich countries of Central Asia and with the fast growing economies of South Asia to their mutual benefit.

The Energy Charter process also provides for a forum to share knowledge and facts on an equal basis between its member countries on a multitude of issues, from energy efficiency, investment climate, price and tariff formation, up to transfer of technology and cooperation on technology development. The presentations by the Energy Charter Secretariat during the BSEC Working Group on Energy are part of the results of this process of knowledge sharing.

I hope that my intervention was able to illustrate some of the Treaty's benefits to the BSEC members and that it will contribute to the further strengthening of their involvement in the Energy Charter process. The Energy Charter Secretariat is more than willing to cooperate with the BSEC on energy issues and I am grateful for your attention at this Ministerial meeting here in Kiev today.