

HOW THE ENERGY CHARTER TREATY CAN HELP ACHIEVE THE OBJECTIVES OF THE BARCELONA DECLARATION IN THE ENERGY SECTOR



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It seems to me not inappropriate to offer you a parallel between two different processes which support two policies about the co-operation in the energy sector which have a large overlapping zone: the Barcelona process and the Energy Charter process. Both of these are more or less from the same era. The Barcelona process through the so-called Barcelona Declaration signed 28 November 1995 establishing as its principal objective to build a free trade zone by 2010. Within the framework of this broad objective the Declaration recognised the crucial role that energy will play.

On 17 December 1994 the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) were signed in Lisbon. The Treaty strengthens the already existing Energy Charter Process which began with a political declaration, signed in The Hague in December 1991.

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The 1991 declaration is a political commitment to several core principles, namely:

1. Open and competitive energy markets
2. Non-discrimination amongst participants
3. Recognition of state sovereignty over national resources
4. Creating the necessary conditions to stimulate energy investments
5. Due consideration to the energy efficiency as a most affordable tool, in the short term, to achieve the objectives of the climate changing policies and the security of supply.

The fundamental aim of the Energy Charter Treaty is to strengthen the rule of law on energy issues by creating a level playing field of rules to be observed by all participating governments thus minimising the risks associated with energy related investments and trade.

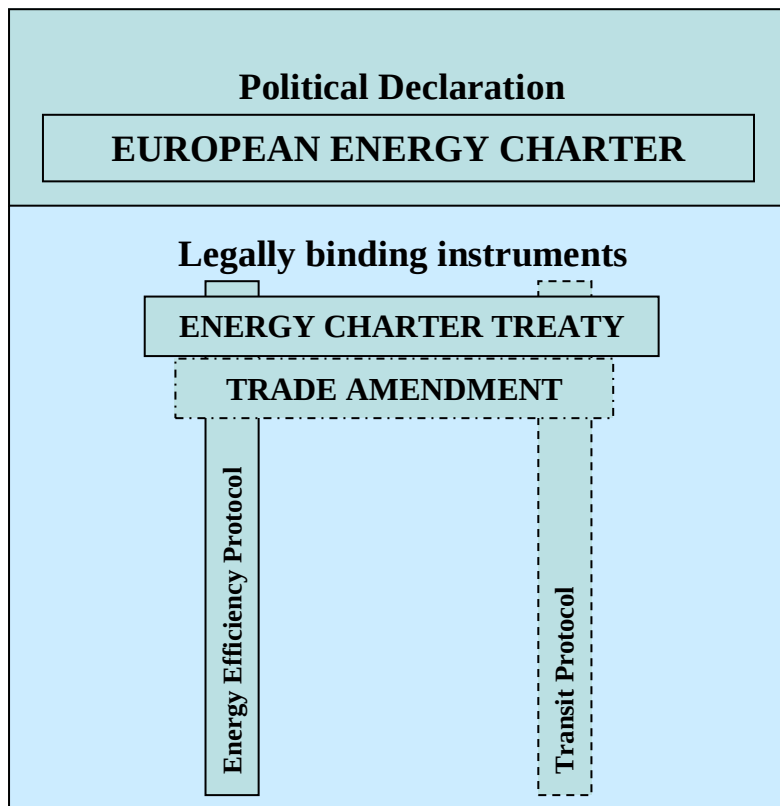
The Energy Charter process – Key Dates

25 June 1990	Dutch Initiative presented at the European Council in Dublin
17 December 1991	Signature of the European Energy Charter (declaration)
17 December 1994	Signature of the Energy Charter Treaty (ECT) and the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA)
16 April 1998	Entry into force of the ECT and PEEREA
Currently	• ECT signed by 51 states and European Communities • ECT ratified by 46 states – not yet ratified by: Russia, Belarus, Iceland, Australia and Norway • Russian & Belarus: provisional applications (art. 45 ECT)

The action field of the Energy Charter was focused in the countries of the Eurasia continent owing to the fact that Russia and many of its neighbours,

were rich in energy resources but needed major investment to ensure their development, whilst the States of Western Europe had a strategic interest in diversifying their sources of energy supplies thus reducing their potential dependence on the other areas of the world.

The Energy Charter Process – Legal Framework



But as time goes by, the situation is changing! Other States are beginning the necessary procedures to accede to the Energy Charter Treaty recognizing that multilateral rules can provide a more balanced and efficient framework for international co-operation than is offered by bilateral agreements alone or by non legislative instruments.

I'm not able to make a detailed comparison between the ambitious objectives spelt out in the Barcelona declaration because of the constraints of

length. Following the Barcelona declaration the foreign ministers of the signatory countries and the Euro-Mediterranean ministers for energy met many times: from *Barcelona 1* in 1995 to *Barcelona 9* in Cyprus in 2007. Numerous studies, preparatory documents and declarations have been produced and yet the shared opinion of the Barcelona declaration is that it has not lived up to expectations. In parallel the same can be applied to the Energy Charter Treaty, notably the Transit protocol and the Russian ratification issues over the past seven years have remained on standby, giving a less than excellent image of the Energy Charter process. However it is important to recall that in Russia the political and economic transition was difficult and too often the internal turmoil was not conducive to major political decision, notably in the energy sector.

Nevertheless, what are the reasons for this unsatisfactory situation?

I would dare to say that there are two main reasons: first, the lack of adequate involvement and coordination of the three most important players in both of the processes notably policy makers, and in particular for the Barcelona process, energy companies and the financial institutions. Secondly, the poor implementation of the decision taken at a political level. The many solemn declarations and commitments were not followed by appropriate legislative, administrative, financial and industrial actions.

Whilst there has been significant progress in some areas and with some projects, what we see across the Mediterranean region as a whole, is a wide variety of domestic market structures in the energy sector, some lack of consistency and continuity in policy-making, and a persistently high level of

non-commercial risk that continues to discourage much-needed investment in new energy production and infrastructure.

It was with precisely these factors in mind that the Barcelona Declaration encouraged the Mediterranean partners to join the Energy Charter Treaty. To this date, only Turkey has done so, and it has become a major player in the Energy Charter Process, attracting the lion's share of the investments in the region. In addition, Malta and Cyprus are founding signatories of the Treaty, having signed in 1994, and joined the European Union in 2004. Algeria, Morocco, Tunisia and Jordan are still observers.

Today, many people have recognised the need to re-design and re-launch the European Union's policy towards the countries in the Mediterranean basin. The combination of different processes, such as the Barcelona Process, the European Neighbourhood Policy, and the Union for the Mediterranean, which is the name of Sarkozy's recent initiative, is quite confusing and the multiplicity of institutional frameworks makes it difficult for the Magreb and the Mashreq countries to profit from such initiatives. Why start all over again?

I am sure that if the Mediterranean countries decide to join the Energy Charter Treaty, the investments and the transparency that it will bring with it will encourage a stronger, more sustained and uniform flow of investments in the region. It will also provide a useful framework in establishing a set of common rules for both energy cooperation in the Euro-Mediterranean area and a better functioning of the market.

Let me underline how the Energy Charter Treaty can help in fulfilling the objectives of the Barcelona Declaration.

First, what are these objectives:

1. that the legislative framework both domestically and regionally must evolve, and
2. to give the appropriate incentives to projects through a balanced approach capable of respecting national sovereignty over natural resources while giving the necessary guarantees to the private sector.

Bearing these objectives in mind, what does the Energy Charter Treaty provide? It:

- promotes a well functioning energy market across borders through guidelines on cross-border trade;
- creates a stable and favourable political and business climate across its constituency that favour cross-border investments; and
- recognises each country's legitimate ambitions such as: (i) the producers' unfettered sovereignty and desire to derive maximum benefits from their indigenous resources while recognising the need for consumers and their industry for a stable long term investment environment and beyond, securing the supply; (ii) the same is true of the increasing producers' investments in consumers where the drive to deregulate and liberalize might be perceived by producers as a threat to the development of the gas industry and to the security of demand; (iii) securing demand for producers, for instance in the form of long term contracts and access to the consumers' markets;

In addition to the interests of producer states, there is also a clear interest in creating a stable basis for cooperation between EU consumer markets and non-EU producers from those countries through whose territory energy

exports must in transit – of which Turkey, Tunisia and Morocco, but also Jordan, Lebanon and Syria are prominent examples.

Last but not least, given changes in the global energy environment, especially trends in global energy prices, and that energy efficiency is a top priority for energy, environmental and social policy, the role which can play the Protocol on Energy Efficiency and Related Environmental Aspect (PEEREA) could be quite useful for Magreb and Mashreq countries. Through the implementation of the PEEREA, the Energy Charter provides its member countries with a menu of good practices and a forum in which to share experiences and policy advice on energy efficiency issues. Since being created in 1998, the Working Group has completed 58 Regular Reviews and 17 In-depth Reviews, along with 20 analytic studies of key issues related to energy efficiency. This experience, together with a growing international focus on energy efficiency, provides a sound basis to expand the future activities of this group in Magreb and Mashreq countries.

Facing as we do the current challenges, it means not walking away from the values and principles of the Barcelona Declaration and the Energy Charter but continuing to connect with and demonstrate them. We commit to being a proactive partner in the response to the challenges faced by the Mediterranean community of nations.

We, at the Charter, recognise our share of responsibility in a certain lack of vision; perhaps we have not dedicated the necessary attention to the Mediterranean. But I am confident things are about to change. The spirit of

the Barcelona Declaration is based on the idea of shared mutual benefit. So too is the Energy Charter. I believe that this spirit lives on.

