ENERGY CHARTER SECRETARIAT

СЕКРЕТАРИАТ ЭНЕРГЕТИЧЕСКОЙ ХАРТИИ

The Secretary-General
Генеральный Секретарь

Brussels, 15 February 2011
SG/11/E/1169

European Commission
DG Energy – ENER.A.3
Rue De Mot 24-26
1049 Bruxelles

Subject: Public consultation: The external dimension of the EU energy policy

Dear Ms. Abreu-Marques,

The Energy Charter Secretariat appreciates the opportunity to contribute to the development of the external dimension of the EU energy policy through the Public Consultation currently being conducted by the European Commission.

The European Union is one of the dominant actors within the constituency of the Energy Charter, which itself comprises 51 states on the Eurasian continent and beyond. As parties to the Energy Charter Treaty, the European Union and its member states have available to them a broad multilateral legal framework for energy co-operation, which enables them to promote the objectives of their external energy policy in a co-operative and mutually beneficial way with their external partners.

Based on its mandate to promote the Energy Charter, the Secretariat hereby provides a contribution to the EU's policy making in the area of international energy relations. We are available to provide further information or clarification.

Yours sincerely,

André Mernier

Attn: Response by the Energy Charter Secretariat to the Public Consultation

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Response by the Energy Charter Secretariat to the Public Consultation on the external dimension of the EU energy policy

February 2011

Contributor: The Energy Charter Secretariat (ECS)

The Energy Charter Conference is a multilateral intergovernmental organization for co-operation in the energy field based on the Energy Charter Treaty with its legally binding rules on energy trade, transit, investment promotion and protection and the environment. The ECS supports the Charter Conference in carrying out its duties. Members of the Charter Conference include the European Union and its 27 member states, EFTA and South-Eastern European states, the former and actual members of the CIS, Australia, Japan, Turkey and Mongolia.

This contribution reflects opinions of the Energy Charter Secretariat developed under its general mandate from the Energy Charter Conference. An opinion voiced by the Secretariat is not binding on the Charter Conference, its member states or any arbitral tribunal.

Question 1: Should the EU promote further energy market integration and regulatory convergence (notably as regards energy market regulation, environmental and safety standards) with its neighbours? Is there a need for a differentiated approach between the Eastern and Southern neighbours or between countries?

Integrating energy markets and deepening regulatory convergence between the EU and its neighbours is in our view the right approach to deal with the EU's increasing dependence on imported energy resources and the need to address global climate change. Integration of these markets with those of Eastern and Southern neighbours should therefore be a priority. The Energy Charter is an appropriate platform for this approach. It was initiated by great European leaders in the early 1990s, to seize the opportunity then arising when markets opened in the East, following the fall of the Iron Curtain. Today, similar opportunities may arise in the Southern neighbourhood, where there is an unmistakable desire of the population for democracy and economic reform. The added value of the Energy Charter is still the same: improvement of the investment climate in the energy sector, access to resources on a mutually beneficial basis, promotion of energy trade and economic development, and enhancing energy efficiency. For this purpose, we believe the EU and its member states should support the expansion of the Energy Charter's constituency to include North African states.

The Energy Charter has a more general approach than the Energy Community, which was developed as an instrument of pre-accession to the EU and which is complementary to the Energy Charter. The Energy Charter Treaty's advantage is that it provides binding rules for a broader constituency, notably beyond EU candidate countries. The Energy Charter Treaty includes energy producers, consumers and transit states. It already serves as a basis for deeper market

integration with countries in the Caspian region, Central Asia, Eastern Europe and with Russia, providing for common binding rules on energy trade, transit, and investment promotion and protection. The Energy Charter Treaty should be the prime instrument for strengthening regulatory convergence within a broader region where the possibility of expanding European internal market rules has its limits. Where appropriate, it should be complemented by the Energy Community. The Energy Charter and Energy Community should therefore co-ordinate their outreach policies in the EU neighbourhood regions.

Question 2: Should the EU take concrete actions to foster greater investment in renewable energy sources in its neighbouring countries? What actions?

Investment in renewable energy sources in its neighbouring countries would show a threefold benefit for the EU: on the one side it would strengthen the European energy security, on the other side it would help attain the 20% RES target by making the target economically affordable through imports. Furthermore, such investment would also offer new opportunities for the European energy equipment industry. In this regard the multilateral framework of the Energy Charter Treaty contains the essential tools to favour investment by common rules on investment protection and to promote efficient markets. Trade in energy from renewable energy sources and technologies could benefit even more from the Energy Charter Treaty's rules if these were complemented by some specific provisions aiming at de-carbonizing the economy.

The EU and its member states should promote the accession of Northern African states to the Energy Charter Treaty in order to make these instruments fully available also for renewable energy from North Africa.

Question 3: What measures should the EU take to reinforce and focus its partnerships with key suppliers (of hydrocarbons and other energy sources) and transit countries? What should be the focus of such enhanced partnerships? (What countries? What topics?)

The Energy Charter Treaty offers a model to reinforce and focus partnerships between different stakeholders. It is based on multilateral co-operation and common rules which bring together the European Union and important suppliers such as Russia, Norway, Kazakhstan, Azerbaijan, and Turkmenistan, and at the same time transit countries such as Turkey, Georgia, Ukraine and Belarus. The modernisation process of the Energy Charter currently ongoing (http://www.encharter.org/fileadmin/user_upload/document/Road_Map_ENG.pdf) is aimed at strengthening mutual benefits and expanding the Charter's geographical scope. This scope is obviously much broader than that of the EU's enlargement policy could ever be. The European Union should strongly encourage the use of the modernisation process of the Energy Charter as a platform for discussion of proposals from producing countries such as the Russian Federation, Kazakhstan and Turkmenistan with a view to improving the legal framework for energy co-operation.

Experience has shown that partnership with key suppliers of hydrocarbons requires a high degree of flexibility. Producer countries of hydrocarbons often require specific exceptions to the rules for energy trade, transit and investments. In order to prevent such exceptions from becoming the norm, it is important that the rules be set in multilateral frameworks such as the Energy Charter Treaty.

The tendency of hydrocarbon-supplying countries to require exceptions is likely to be present whether a multilateral or a bilateral approach is taken.

For consumer and producer countries, the main topic is access; for the former, access to resources and investments; for the latter, access to markets and technologies; for both, access to cross border infrastructure.

Question 4: How can the EU best support complex infrastructure projects outside the EU that can contribute to enhancing the EU security of supply and diversifying its supply sources and routes? For instance, should the EU seek to coordinate or be party to intergovernmental agreements which concern projects of European interest?

Most of the countries targeted by the EU in its efforts to diversify its supply sources and routes already co-operate with the EU within the Energy Charter, notably Turkey, Georgia, Azerbaijan and Turkmenistan. Other countries of the region are observers to the Energy Charter or are in the process of accession to the Energy Charter Treaty.

The Treaty's framework for energy co-operation with its binding provisions on energy trade, transit and investment is a solid basis for the complex infrastructure projects currently envisaged by the EU with external partners. The role this framework plays in facilitating investment and trade in energy is widely acknowledged by the industry, in particular those investors from EU countries investing in energy projects outside the EU.

The Energy Charter is working to complement the Treaty's rules by a Transit Protocol containing more specific provisions to promote investments in infrastructure projects. The EU should continue its efforts aimed at making the Transit Protocol a suitable instrument for energy transit and cross-border infrastructure, which may play a role in the EU's diversification projects which target Caspian gas as well as renewable energy from North Africa.

Question 5: What focus should the EU give to its energy cooperation with major consuming countries? In what topics and countries could the EU action bring most added- value?

The obvious focus for co-operation with consumer countries lies in energy efficiency, technological co-operation and trade in energy equipment. Here, the EU and its member states could make more and better use of the Energy Charter. The Treaty's trade rules cover energy equipment, and already constitute a legal basis for mutually beneficial trade relations. This approach could be combined with the Charter's policy to promote energy efficiency, especially as it covers a number of countries which are not members of any other relevant international organisation. The Energy Charter has particular expertise in assisting countries in transition. This may be of great value for major emerging countries as well.

Question 6: Should the EU take action to increase its collective weight in global energy discussions and in international organisations and initiatives dealing with energy? How?

The EU should use its collective weight to develop global energy governance. The need for effective global energy governance is widely acknowledged, but a common platform has not yet emerged. Several international fora have ambitions in this regard, some of which focus on other regions of the world than Europe. Against this background, there are good reasons for the EU to promote the Energy Charter on the global level. For example were it to become a specialised agency of the UN, the Energy Charter could ensure that global energy governance would have a solid European foundation.

Question 7-10: The Energy Charter Secretariat considers itself not competent to provide answers to these questions.

Question 7: What initiatives could help the EU promote nuclear safety, security and nonproliferation standards globally?

Question 8: How could the EU and its Member States gain together greater impact on international energy issues? What concrete actions should be taken to ensure synergies and coordination between Member States' initiatives and EU initiatives?

Question 9: Do you consider that the compliance with EU internal market rules and the EU energy security objectives of Member States' bilateral agreements with third countries can be an issue? Should the EU take action to ensure compliance? How?

Question 10: How could the European industry and civil society best contribute to the EU external energy policy objectives?