



TRANSIT PROTOCOL: NEGOTIATIONS SUSPENDED

Contents

Transit Negotiations suspended
Page 1

ASEAN becomes observer
Page 2

New Conference Vice-Chairman
Page 3

New Director joins Secretariat
Page 3

Chairman's statement on Transit Protocol
Page 4

Comments on Protocol negotiations
Page 5

Eurasian Gas Markets Conference
Page 6

Model Agreements
Page 7

Turkish Energy Efficiency Review
Page 7

Other News in Brief
Page 8

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Negotiations among fifty-one governments on a legally binding international agreement on energy transit issues have been formally suspended. This conclusion was reached at a meeting in Brussels of the Energy Charter Conference on 10 December 2003, once it became clear that a unanimous decision to adopt the agreement – known as the Energy Charter Transit Protocol – could not be achieved on the basis of the final compromise text put forward by the Chairman of the Conference, Henning Christophersen.

The Transit Protocol, negotiations on which were launched in 2000, aims to build on the existing transit-related provisions of the Energy Charter Treaty, by developing an enhanced set of rules under international law governing energy transit flows across national borders. Agreement was reached on the bulk of the Protocol's text at the end of 2002. There remained only a very few outstanding issues to be resolved before the Protocol could be finalized, all of which related to differences in position between the European Union and Russia. Bilateral talks between these two parties during this year, with the aim of finding solutions to these remaining issues, led to the tabling of a final text for adoption at the meeting on 10th December.

At the conclusion of the meeting, the Conference Chairman issued a statement urging all Contracting Parties and Signatories to the Energy Charter Treaty to be guided by the principles of the draft Transit Protocol when regulating the transit of energy through their territories, pending the Protocol's

formal adoption and signature (see text on page 4). In addition to this formal statement, Henning Christophersen commented as follows after the meeting:

"I deeply regret that we were not able to achieve a unanimous decision by the Charter Conference today in favour of adopting the Transit Protocol. It remains my view that the text on the table reflects a fair balance of



Christophersen: "We have not closed the door on the negotiations"

interests, and offers solutions that all parties, including the EU and Russia, should be able to accept. It is even more regrettable that, in my judgment, this outcome was largely determined by factors unrelated to the substance of the proposed text of the Protocol itself" (see in particular comments on page 5 by Russian Deputy Prime Minister Khristenko on EU-Russian negotiations over Russia's WTO accession).

"Under these circumstances, I consider, as Chairman, that

there is no purpose to be served by continuing the negotiation process at this time. Nonetheless, we have not closed the door on the negotiations forever, and I have tasked the Energy Charter Secretariat with reporting back to the next meeting of the Charter Conference in June 2004 regarding the prospects for completing our work on the draft Protocol."

"It cannot be denied that this outcome represented a serious setback for the Energy Charter process. But the fundamental issue at stake has not altered – namely, that problems affecting energy flows in transit, via pipelines and grids, represent a major potential risk for the collective energy security of the countries of Eurasia. It therefore remains the case that governments need to create a multilateral framework of rules on transit issues, which will help to mitigate this risk as far as possible."

"Despite today's decision, there is no more appropriate forum within which to conduct this work than the Energy Charter process, in view of its geographical coverage and the legal foundation on which it is based. Several of our member-governments – including, I should underline, the Russian government – made it clear at today's meeting that they share this opinion. But, as the Transit Protocol has demonstrated, the Charter's potential can only be fulfilled if there is a true political commitment on the part of all our member-states to draw up such rules and subscribe to them."



ASEAN BECOMES OBSERVER TO THE ENERGY CHARTER



The Association of Southeast Asian Nations (ASEAN) has become an official observer-organization to the Energy Charter Conference. ASEAN's application to be granted observer status was unanimously approved by the Charter Conference at its meeting in Brussels on 10 December 2003.

"This is another welcome step towards strengthening the Asian dimension of the Energy Charter's work", commented Energy Charter Conference Chairman Henning Christophersen. "The countries of Southeast Asia face many of the same challenges in developing regional energy cooperation as

exist here in the wider Eurasian space, in particular in terms of creating a secure climate for energy investments and promoting cross-border energy infrastructure projects. It is therefore both logical, and in our mutual interests, that closer cooperation and exchanges of information be developed between ASEAN and the Energy Charter process".

ASEAN, which is comprised of ten member-countries (*Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam*), will be represented in its dealings with the Energy Charter process through the Jakarta-based ASEAN Centre for Energy, which will in future be

entitled to attend all meetings of the Energy Charter Conference and its subsidiary bodies in an observer capacity, and to receive all related official documentation.

ASEAN's acceptance as an observer-organization marks a continuation of the development of the Energy Charter's relations with countries outside its original constituency. Australia, Japan, Mongolia and the five states of Central Asia are all long-standing full members of the Energy Charter process, and observer status at the Energy Charter Conference has also been granted in recent years to the People's Republic of China, the Republic of Korea, the Islamic Republic of Iran and the Federal Republic of Nigeria.

ASEAN CENTRE FOR ENERGY'S EXECUTIVE DIRECTOR ON COOPERATION WITH THE ENERGY CHARTER



Dr Guillermo R. Balce

"This event is a milestone in cooperation between ASEAN and the Energy Charter Treaty. Internally, in ASEAN, it is also a milestone in energy cooperation. This marks a formal beginning in ASEAN's quest for a globally borderless energy market.

Of course, we have started the road to integration of our energy markets and systems by the so-called ASEAN Vision 2000 Declaration in 1997. We pursue this vision along a path of integrated energy infrastructures including an ASEAN Power Grid and a Trans-ASEAN Gas Pipeline. The issues that we encounter in the course of the work towards integration are basically the same issues addressed by the Energy Charter Treaty and related protocols.

Therefore, I could foresee that in the near future we in ASEAN will not be content with being just an observer in this conference. Individually, or collectively, I can look forward to our member states submitting applications for upgrading to contracting party status."

Extract from address to the Energy Charter Conference on 10th December 2003 by Dr Guillermo R. Balce, Executive Director of the ASEAN Centre for Energy in Jakarta, in connection with ASEAN's acceptance as an observer-organization to the Charter Conference



CHARTER NEWS

A newsletter from the Energy Charter

NEW VICE-CHAIRMAN OF ENERGY CHARTER CONFERENCE TAKES UP OFFICE

A senior Russian diplomat took up his position at the beginning of January as one of the two Vice-Chairmen for the year 2004 of the Energy Charter Conference.

Mr Andrei Denisov, Deputy Foreign Minister of the Russian Federation, was appointed as one of the Charter Conference's two Vice-Chairman at the end of 2003, following the formal proposal of his candidacy by the Government of the Russian Federation. He joins Mr Kazuyuki Katayama (Director of Energy Resources Division, Economic Affairs Bureau, Ministry of Foreign Affairs of Japan), Vice-Chairman of the Conference since November 2002, whose re-designation for 2004 was also approved at the end of last year.

Energy Charter Conference Chairman Henning Christophersen welcomed Mr Denisov's appointment as a positive, tangible sign of Russia's commitment to remain fully engaged in the work of the Energy Charter process. "It is well known that Russia has not yet ratified the Energy Charter Treaty, which remains a major concern for our organization", commented Christophersen. "But it is therefore all the more important, given the enormous role played by Russia as

an energy producer and transit country, that we ensure the active engagement of Russia in the Energy Charter's work. Mr Denisov's appointment as Vice-Chairman of the Charter Conference means that the Russian government will be directly represented within the leadership of our organisation's governing body, and this can only help to improve and strengthen our dialogue with the Russian authorities on all aspects of the Energy Charter's work".



Andrei Denisov

Andrei Denisov holds the diplomatic rank of Ambassador Extraordinary and Plenipotentiary. He speaks English and Chinese, and served as Russia's Ambassador to Egypt before being appointed as Deputy Foreign Minister, with particular responsibility for international economic cooperation, in December 2001.

NEW DIRECTOR JOINS THE SECRETARIAT



Kalin Borissov

Kalin Borissov of Bulgaria took up his appointment as the Secretariat's new Director responsible for Trade and Transit issues, and in addition relations with Non-Member countries, at the beginning January 2004. He replaces the previous Director, Leif K. Ervik, who returns to the Norwegian government administration after eight years of service with the Secretariat.

Having begun his career with the United Nations (UNDP), Kalin Borissov joined the Bulgarian Foreign Service in 1990 and served from 1991 to 1995 in the Bulgarian Mission to the United Nations in

Geneva, where he also participated in Bulgaria's accession negotiations to GATT (WTO) and its negotiations on an association agreement with EFTA. From 1995 to 2000 he headed the European Union's Liaison Office for the Multi-Country Environmental Programme based in Budapest.

Since 2001 he has worked with the Danube Commission's Danube Clearance Project, aimed at removing the debris of bridges in the Novi Sad area of Serbia & Montenegro destroyed during military operations in 1999, serving as Director of the Project from 2002 onwards, and leading it to its successful conclusion by the end of 2003.



STATEMENT BY THE ENERGY CHARTER CONFERENCE CHAIRMAN ON THE DRAFT TRANSIT PROTOCOL

Following the decision taken at the Energy Charter Conference meeting on 10th December 2003 to suspend further work on the draft Energy Charter Protocol on Transit (see report on page 1), a statement was issued by Henning Christophersen, Chairman of the Energy Charter Conference, which is reproduced below in full:

"I have listened very carefully to our debate during the 13th Meeting of the Charter Conference regarding the Transit Protocol negotiations. I am encouraged by the strong desire expressed by Contracting Parties and Signatories to complete the Energy Charter Protocol on Transit as soon as is practically possible.

I note that delegations have reached wide agreement on most of the provisions of the draft Energy Charter Protocol on Transit as contained in document CC 251 of 31 October 2003. I am therefore of the view that this draft represents the best possible compromise.

I also take note of the views expressed by delegates regarding the importance of the provisions of the draft Energy Charter Protocol on Transit for their economies, in particular for access to energy transport facilities and markets, thereby enhancing energy security interests of producers, consumers and transmitters.

In recognition of the above, the Energy Charter Conference will continue to work actively towards achieving a situation in which the Transit Protocol can be adopted and signed by all Contracting Parties and Signatories of the Energy Charter Treaty at the earliest possible stage. I would like to invite all participants to contribute actively and constructively to this process.

In addition, I would strongly recommend that the draft Energy Charter Protocol on Transit should guide Contracting Parties and Signatories when formulating policies concerning Transit of Energy Materials and Products.

Finally, I invite the Energy Charter Secretariat to review the application of this statement and to report to the Energy Charter Conference, recommending any measure necessary to reach its objectives."

Note: In the interests of transparency, the final draft text of the Transit Protocol, as submitted to the Energy Charter Conference in December 2003, has been made publicly available, under the authority of the Conference Chairman, on the Energy Charter web-site (go to www.encharter.org, then select "Transit" in the left-hand menu).

RUSSIAN GAS SOCIETY PRESIDENT ON ENERGY CHARTER TREATY



Valery Yazev

"In his speech (to the 9th Meeting of the Russian-French Inter-Parliamentary Commission in Paris, 20 October 2003), Valery Yazev, President of the Russian Gas Society, touched on ratification of the well-known Energy Charter Treaty (ECT), which regulates transit via inter-state pipelines. In his opinion, ratification of the ECT does not fully meet Russia's strategic interests in the energy sector.

"Russia does not seek to dodge its responsibilities before the CIS countries for ensuring the energy security of the post-Soviet space and a considerable part of the territory of Europe", said Yazev. "It is precisely our understanding of these responsibilities that explains our approach to the ECT ratification issue. We simply do not have the right to create a stimulus for destabilizing processes in the Russian gas sector"."

From Russian Gas Society press-release, 20 October 2003



CHARTER NEWS

A newsletter from the Energy Charter

RECENT COMMENTS ON THE TRANSIT PROTOCOL NEGOTIATIONS



Viktor
Khristenko

"The issue of transiting Russia's gas across the European Union should be dealt with in the framework of the Energy Charter, not WTO. This opinion was voiced today by Russia's Deputy Prime Minister Mr. Viktor Khristenko.

Khristenko labelled "unexpected" the fact that the issue of gas transit across Europe has surfaced in the framework of negotiations on Russia's accession to the WTO. "From our point of view, this is impossible as a matter of principle: to leave aside the Energy Charter which has been established especially to deal with such issues, and take the topic to negotiations on the WTO. Our position is simple - WTO in no way resolves the transit problems. This theme is not covered by WTO norms and rules" - Khristenko stated."

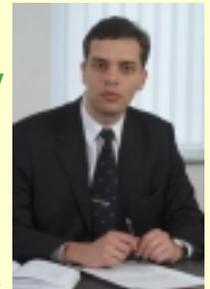
From RIA-Novosti, Moscow, 1 December 2003

"A complex analysis of the benefits for Russia of ratifying the Energy Charter Treaty and the Transit Protocol has never been undertaken anywhere by anybody. Centre stage has been occupied by a primitive tactic - to prevent Central Asian gas from reaching Europe. Why? Why not buy this gas up on a long-term basis? 70 billion cubic metres would certainly do no harm for the internal market, where demand is increasing but production overall is stagnating. Why not allow this gas through to Europe, taking into account that given fair transit tariffs across Russian territory it is hardly likely to be able to squeeze Russian gas out of the European market?"

The most interesting thing is that exactly the same problems concerning the necessity to take on obligations to ensure fair energy transit have become an insurmountable obstacle in Russia's negotiations on accession to the WTO. So now, if Russia refuses to ratify the Transit Protocol but continues its efforts to join the WTO, it will be forced to take on even tougher obligations on transit - moreover, on a unilateral basis. Whilst no-one will be under any obligation for anything towards Russia in the area of transit.

Is it not the case that too many problems are cropping up for Russia on the international energy markets due to the initiatives of Gazprom's management, which often end in embarrassment? ... As a result, thanks to the short-sighted position that has been imposed by this company, Russia has every chance of ending up excluded from the international legal sphere in the energy sector, having taken on the very same "awkward" obligations, but on a unilateral basis as part of its WTO accession."

Extract from article by Vladimir S. Milov, President of the Institute for Energy Policy (Moscow) and former Deputy Energy Minister of Russia, in the newspaper "Vedomosti", 4 December 2003



Vladimir Milov



RAO "EES Rossii" Chairman
Anatoly Chubais, Co-Chairman
of the EU-Russia Industrialists'
Round Table, addressing the 5th
General Meeting in
Moscow

"It is time to move the EU-Russia Energy Partnership to a new qualitative level, as stressed in the Fourth Progress Report on the energy dialogue tabled during the recent Summit between the Russian Federation and the European Union. In this framework, issues of nuclear trade, security of energy demand and supply, energy conservation, guarantees protecting from non-commercial risk, arbitration dispute settlement and new, advanced forms of cooperation should be developed.

Work on the Transit Protocol and other legal documents of the Energy Charter Conference, as well as preparations for the ratification of the Energy Charter Treaty by Russia on conditions corresponding to its competitive and strategic interest, will contribute to this process."

Extract from Joint Conclusions adopted at the Fifth General Meeting of the EU-Russia Industrialists' Round Table in Moscow, 1-2 December 2003



EURASIA CAN BECOME A SINGLE GAS MARKET, CONCLUDES CONFERENCE

The countries of Eurasia have the potential to create a single market for natural gas. This was the conclusion of a Conference on "Eurasian Natural Gas: Opportunities and Risks" held in Brussels on 12-13 November 2003.

The Conference was organized by the Energy Charter Secretariat together with the International Association of Oil and Gas Producers (OGP) and the European Union of the Natural Gas Industry (Eurogas). It brought together over 200 participants from governments, energy companies, financial institutions and international



Jean-Marie Devos (Secretary General, Eurogas) and Dominique Ristori (Director of General Affairs Directorate, DG Transport & Energy, European Commission) share a platform during the Conference

organizations, with the aim of discussing the creation of a single market for gas trade and investments in Eurasia. It also highlighted the obstacles that need to be overcome to make this goal a reality. Among the keynote speakers were senior figures from industry, the EU institutions and inter-governmental bodies.

Key issues raised during the Conference included the development of greater gas supply security and competition across the Eurasian continent, and the need for effective cooperation aimed at establishing more liberalized regimes of access to national gas pipeline networks in Eurasia's transition economies. Participants in the Conference underlined the need to find solutions to the issues raised, as part of the creation of the right long-term climate for increased investments in gas production and transportation in Eurasia, for the benefit of consumers, industry, and general economic growth.

In his concluding address, Energy Charter Conference Chairman Henning Christophersen noted that

huge investments are needed if the Eurasian continent is to maximize its potential economic advantages as a single gas trading area, and the risks associated with these investments therefore need to be reduced to the minimum possible. "Neither governments nor industry have all the answers to the challenges that exist in this area, and it is therefore vital that they join forces in discussing them, in order to develop policy approaches that take into account the needs and interests of both producers and consumers", said Christophersen. "This Conference represented a step forward in promoting such a discussion, bringing together as it did many of the key actors involved from across the Eurasian area".

Note: Although this Conference was held under the "Chatham House" rule, a number of speakers have kindly agreed to allow the texts of their presentations to be made publicly available. These texts can now be viewed on the Energy Charter's web-site (go to www.encharter.org, then select "Seminars").

EU ENERGY MINISTERS REAFFIRM ENERGY CHARTER'S ROLE

"The Council recalls the importance of the role of the Energy Charter Treaty in supporting long-term cooperation between the EU and its neighbours and partners by promoting investment in energy facilities, free trade in energy, and the uninterrupted transit of energy; underlines that the Russian Federation should be further encouraged to ratify the Energy Charter Treaty and seek agreement to the Transit Protocol; and considers that also transit and supplier countries in the Maghreb should be encouraged to follow the principles of the Energy Charter Treaty."



From Conclusions adopted by the Meeting of the European Union Council on Transport, Telecommunications and Energy, Brussels, 15 December 2003



CHARTER NEWS

A newsletter from the Energy Charter

CHARTER CONFERENCE NOTES MODEL AGREEMENTS ON CROSS-BORDER PIPELINES

At its meeting in December 2003, the Energy Charter Conference took positive note of a first edition of Model Agreements on Cross-Border Pipelines, which were developed on the basis of a mandate given by the Conference in December 1999. Two Model Agreements have been prepared – an Inter-Governmental Model Agreement (IGA) and a Host-Government Model Agreement (HGA).

The aim of each of these Model Agreements is to provide a text that reflects best practices, on which governments and companies involved in specific projects that involve cross-border flows of energy can draw for guidance. The Model Agreements were drawn up with the assistance of an ad-hoc Legal Advisory Task Force, chaired by the Energy Charter Secretariat and comprised of senior lawyers from various law firms and energy companies, and also an Expert Group open for participation by all Energy Charter member-governments and well as representatives of industry.

Secretary General Ria Kemper underlined that the Model Agreements are non-binding in nature, in the sense that there is no obligation on companies or governments to use them. “Nonetheless, we believe that by issuing this first edition of the Model Agreements, we can make an important contribution to the dissemination of best-practice information, on a recommendatory basis, that will be of use to those companies and governments that are negotiating specific energy projects involving transit”, she added.

The full texts of the First Edition of the Model Agreements on Cross-Border Pipelines can now be viewed on the Energy Charter web-site (www.encharter.org). The Secretariat has been tasked by the Conference with keeping them under review and updating them as necessary in future, in the light of ongoing developments. Further comments or questions about the Model Agreements are welcome, and should be addressed to the Secretariat’s Legal Affairs Unit (e-mail: LegalAffairs@encharter.org).

IN-DEPTH ENERGY EFFICIENCY REVIEW OF TURKEY PUBLISHED

The Energy Charter Secretariat has recently published the text of the Energy Charter In-depth Review of the Energy Efficiency Policies and Programmes of Turkey. This is the latest in an ongoing series of such reviews undertaken under the Charter’s auspices, designed to monitor member-states’ compliance with their obligations under the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA).

The review, which took place in late 2002, was conducted by a multi-national team of experts from Switzerland, the UK, Romania and the Czech Republic, supported by the Secretariat. Data materials were provided by Turkey and from a variety of other sources, including the IEA, OECD, World Bank and UNFCCC. The review provides a comprehensive overview of the legal and institutional basis in Turkey for promoting energy efficiency objectives, and assesses the extent to which the Turkish government’s

policies in several specific sectors are conducive to the promotion of energy-efficient practices.

Among the key recommendations of the review, which were endorsed by the Energy Charter Conference, are the proposals that more specific targets for energy efficiency savings should be introduced throughout the economy; that increased legal standing and operational strength should be given to Turkey’s National Energy Conservation Centre; that energy efficiency should become a guiding principle in the development of the country’s transport policy; and that the government’s present energy-auditing policy should be expanded to include smaller companies and buildings. The need for greater attention to be paid to promoting public awareness of energy efficiency objectives, and for innovative energy efficiency financing schemes such as third-party financing to be encouraged, is also underlined.



Cover page of the Turkey Review

The full text of the Turkish In-depth Energy Efficiency Review is now accessible, in English and Russian, on the Energy Charter web-site (www.encharter.org), and hard-copies can also be obtained by contacting the Secretariat (see [contact details on page 1](#)).



CHARTER NEWS

A newsletter from the Energy Charter

NEWS IN BRIEF

Deputy Secretary General Visits Iran



During Mr Konoplyanik's meeting with Minister Zanganeh

Deputy Secretary General Andrei Konoplyanik visited Tehran in late November 2003 as part of the Secretariat's ongoing efforts to develop a dialogue with the Iranian government over the aims and objectives of the Energy

Charter process, to which Iran became an observer-state in 2002. In addition to delivering a presentation on the Energy Charter and its activities to the Conference on "Energy Security and New Challenges" organized by the Iranian Institute for International Energy Studies, Mr Konoplyanik held meetings with the Iranian Petroleum Minister Bijan Zanganeh, Deputy Petroleum Minister Nejad Hosseini, Deputy Foreign Minister Mohammad Hossein Adeli, and with other senior officials from the Iranian government. A meeting was also held with the Tehran-based Secretariat of the Economic Cooperation Organization (ECO).

Discussions during Mr Konoplyanik's visit focused on the Iranian government's plans to organize a Workshop in Tehran in early 2004 on the Energy Charter Treaty. This event should provide input for an in-depth study of the consequences of a decision by Iran to accede to the Energy Charter Treaty, which is to be undertaken during the course of this year by the Institute for International Energy Studies, in cooperation with the Energy Charter Secretariat.

Shell addresses Charter's Investment Group



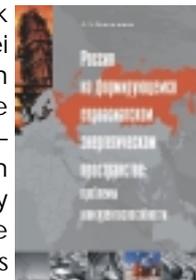
As part of the ongoing process of strengthening ties between the Energy Charter process and the business community, a presentation was made to the November 2003 meeting of the Energy Charter Investment Group by Dr Doru Morariu, General Manager for Asia-Pacific Governance, Shell International Gas Ltd. delivering a presentation on the investment project in the Russian Far East known as the "Sakhalin-2" project. This is the world's largest integrated project for the production of both oil and liquefied natural gas (LNG) (investment volume \$10 billion, plus \$2 billion in the build-up phase), and the largest foreign investment project in Russia. "Sakhalin-2" is a joint venture with the participation of Shell (55%), Mitsui (25%), and Mitsubishi (20%). Dr Morariu's presentation on the history, development and future prospects for the project was received with great interest by the Group, which plans to continue to develop this dimension of its role as a forum for discussions between governments and industry on issues affecting the investment climate for energy companies in the Charter's constituency in the future.



Doru Morariu

New Publication on Russian Energy Issues

For those who speak Russian, a new book by Deputy Secretary General Andrei Konoplyanik has just been published in Moscow, entitled "Russia within the Emerging Eurasian Energy Space—Problems of Competitiveness". Based on articles published in the Russian media by Mr Konoplyanik over the last six years, the book provides an analysis of Russia's role as an energy supplier and transit country, the development of its national energy strategy, trends in the development of its oil and gas markets, and its efforts to attract foreign energy investments, inter alia through production-sharing legislation. The book also assesses the contribution that the Energy Charter process can make to securing Russia's energy interests in an increasingly competitive global environment.



Cover page of the book

Those interested in purchasing copies of this publication should contact the Moscow-based Energy and Investment Policy and Project Financing Development Foundation (e-mail: book@enippf.ru).

Investment Climate Reports on Russia and Slovakia

At its most recent meeting in December 2003, the Energy Charter Conference adopted conclusions with respect to the latest two Country Reports on investment climate and market structure issues in the energy sectors of selected member-states. These reports focused on the Russian Federation and Slovakia.

In the case of the Russian Federation Country Report, the Conference's conclusions take note of the Russian government's efforts to restructure the country's energy markets, particularly in the power sector, and encourage Russia to move towards establishing more competitive, transparent markets in other sectors as well, first and foremost the gas sector. The Conference also highlighted the importance of securing the independence and impartiality of regulatory bodies in the Russian energy sector, and of ensuring a clear division between the domains of authorities dealing with competition and regulation. With regard to Slovakia, the Conference noted with satisfaction that major progress had been achieved in recent years in creating a positive investment climate in the energy sector, and in its restructuring. At the same time, the Slovak authorities were urged to eliminate cross-subsidisation in the electricity and gas sectors, and improve and streamline the existing administrative procedures for the acquisition of real estate by foreign investors.

The full text of the conclusions adopted by the Charter Conference with regard to the Slovakian and Russian Country Reports can be viewed on the Energy Charter web-site (www.encharter.org).