

**ENERGY CHARTER
SECRETARIAT**

CCDEC 2014

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Brussels, 20 November 2014

Related documents: CC 492, Mess. 1176/14, StG 71 rev.

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Approval of the conclusions of the Review under 34(7) ECT

By CC 492 dated 30 October 2014, delegations were invited to approve the Conclusions of the Review under 34(7) ECT. As specified by Rule 20 of the Rules of Procedure (CC 53 Corr. 2) concerning the adoption of decisions by correspondence, members of the Energy Charter Conference were informed that any delegation that wished to object to this proposal should notify the Secretariat of its position in writing by 20 November 2014.

No objections were received within the specified time limit. Therefore, on 20 November 2014 the Conference:

- **Took note** of the report adopted by the Strategy Group on the ‘Review conducted under Article 34.7 of the Energy Charter Treaty’, and
- **Approved** the Conclusions of the Review under 34(7) ECT as attached.

**CONCLUSIONS OF THE REVIEW CONDUCTED UNDER ARTICLE 34(7)
OF THE ENERGY CHARTER TREATY**



The Energy Charter Conference, *takes note of* the report adopted by the Strategy Group on the ‘Review conducted under Article 34.7 of the Energy Charter Treaty’ *and approves* the following conclusions:

General Conclusions

1. The ECT stands as the only multilateral legally binding instrument in the energy sector dealing with the issues of investment protection, transit and trade. This makes it a highly valuable instrument for the evolution of ‘global energy architecture’. Its unique internationally enforceable legal framework, including its strong mechanism for the settlement of disputes, is more than ever a useful mechanism for reducing the specific risks associated with the operation of the energy sector.
2. The **core areas** of the ECT continue to be: **investment promotion and protection, dispute settlement, transit, trade and energy efficiency**. Prioritizing and focusing implementation efforts on the core areas of the ECT is key to fully apply its unique legal framework. This will contribute to promoting co-operation in the energy field and to energy security.
3. In this context, the Energy Charter Conference mandates its standing groups and Secretariat to undertake the following work:

A. Investment Promotion and Protection; Dispute Settlement

High Priority

4. Undertake a comprehensive review of the content, process, objectives and targets of the **ICMS reports** in the Investment Group in 2015 to offer better value for the signatories of the ECT and for its companies. The reports are an instrumental tool for promoting CONEXO policy. In addition, we recognize the importance of monitoring the implementation of the recommendations contained in each ICMS report and updating the reports at appropriate intervals.

5. More emphasis should be placed on **amicable investment dispute settlement**, including to explore the establishment of a body of experts in investment mediation/conciliation; the assistance of the Secretariat with good offices, mediation and conciliation; setting up an investment Ombudsman. Furthermore, the Secretariat should provide **neutral, independent legal advice and assistance** in dispute resolution and participate in pre-trial proceedings between Contracting Parties (before they revert to the mechanisms contained in Art. 27 ECT or Annex D).

Medium priority

6. Monitor the debates on investment protection, including legal issues regarding low-carbon investments, that take place within major organisations and discuss with the relevant experts which **provisions of investment protection and dispute settlement**, could be improved and require further consideration by the Conference. The result could take the form of Protocols or Declarations, without changing the wording of Arts. 26 and 27 ECT.
7. Develop a methodology to identify and discuss less obvious and more complex **non-discriminatory barriers** specific to investments in the energy sector. Furthermore, if the current comprehensive review of the Blue Book 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)**.

B. Trade, Transit, Emergency Response

High priority

8. In view of the emphasis by Contracting Parties on the value of the ECT's transit provisions, undertake a review of the implementation of those provisions by the Contracting Parties. Based on the result of such review, the TTG should discuss the possibility to resume negotiations on the **Transit Protocol**. Promotion of regional rules on transit, while not encouraged, could be supported on a case by case basis ensuring compatibility with ECT and homogeneity with other regional rules.
9. Encourage ratification of the **Trade Amendment** and the possibility to move to a binding tariff standstill regime consistent with developments taking place in the WTO.

Medium priority

10. Promote and further develop Model mechanisms for Emergency Response, which can be used on voluntary basis by the signatories of the 1991 Energy Charter or the 2015 International Energy Charter in case of potential transit emergency situations.

11. Review conditions of **access to capital** markets for the purpose of financing energy trade and investment; assessment of challenges and opportunities for the financing of energy projects; sharing good experiences and knowledge regarding access to capital; and co-operation with IFIs and private banks in promoting access to finance and foreign direct investment.
12. Consider the legal aspects affecting **transfer of technologies**.

C. Energy Efficiency

High priority

13. Undertake a comprehensive review of the content, process and objectives of the **In-depth reviews** at the PEEREA Working Group in 2015 to offer better value for the signatories of the ECT and to fully adapt to the new challenges of the restructuring of the energy markets in non-OECD countries. The reports are an instrumental tool for promoting CONEXO policy. The targets of the review should be non-OECD and non EU signatories of the Energy Charter Treaty and PEEREA. The coverage of other countries should be subject to *ad hoc* decision-making of the Conference considering whether there is voluntary contribution.

Medium priority

14. Consider **further monitoring mechanisms** –in addition to the current follow ups-, based on voluntary contributions, to assess the effectiveness of the policy recommendations contained in the in-depth reviews. Continue exploring ways of **associating donor organisations** present in the reviewed countries in the follow-up and monitoring of the In-depth review. Identify and implement, together with donor organisations, policy support activities to assist countries in the effective implementation of the recommended measures by the in-depth reviews.
15. Continue to provide, on a regular basis, information on **energy efficiency advanced technologies and best practices**, and promote and support the development of adequate policies (technical and economical analysis) to sustain the deployment of such technologies in non-OECD Constituency. Continue to provide, on a regular basis, information on **best practices in use of various financial mechanisms** aimed at enhanced energy efficiency and successful experience in attracting investment in energy efficiency projects in various sectors.
16. Consider **capacity building activities** for Contracting Parties to better understand the best practices and advantages of advanced energy efficiency technologies.

D. Consolidation, Expansion and Outreach

High priority

17. Reconfirm the **importance of enlarging the constituency**. However, a **comprehensive review** of the CONEXO policy, including measuring its practical effect and its effectiveness, should be undertaken during 2015. The Secretariat should continue encouraging interest by third countries to join the Energy Charter Process by signing the '**Updated Energy Charter**'.
18. Without full consolidation, the Energy Charter remains institutionally weak. Therefore, full consolidation remains a challenge for the coming years and should be considered as a priority in the context of Energy Charter's reviews.

E. Institutional Issues, Management, Finance

High priority

19. Update the **Rules of Procedure** to facilitate a better functioning of the Conference: clarify ambiguities and align them with the ECT, take into account technological achievements that have taken place since 1995, provide for observer status to signatories of the UEC and incorporate the Chairmanship practice. The issue of voting rights should also be considered after initial discussion with current signatories of the ECT.
20. Consider the possibility for the **Conference to monitor** (review and require 'due motivation') the exceptions allowed by Article 24.2 ECT.
21. After an evaluation of the Practice on the Chairmanship of the Conference, the Strategy Group should discuss the confirmation of the **international legal personality** of the organisation.

Medium priority

22. Encourage **best practices** provided that periodic review and monitoring of their application is ensured. **Model Agreements** are also encouraged, but feed-back on their use is needed to better evaluate their usefulness.
23. Regarding **subsidiary bodies of the Conference**: reformulate the PEEREA Working Group as a Standing Group; the profile of the Industrial Advisory Panel should be raised to strengthen the dialogue with the business community; and the role of the Legal Advisory Committee should be enhanced to discuss legal issues related to areas covered by the Treaty.

24. Limited resources have to be used in the most effective way to accomplish the goals and objectives of the organisation. Consider, within the Budget Committee, alternative sources of financing.

F. Promotion and Awareness Raising, Training, Knowledge Centre

High priority

25. The Secretariat is encouraged to continue **providing regular overview of known cases and awards (including a follow up on compliance), assisting with requests** -concerning the *travaux préparatoires* and the application of the ECT- and enhancing its **contacts with international arbitration institutions**. The *travaux* should be kept in electronic format for their protection and for facilitating access to them.
26. Finance only a minor part of the costs for **training workshops** through the Secretariat's core budget. The major financing should come from voluntary contributions and direct contributions of the participants. In case of the **Energy Charter Forums**, participation is free of charge. The Secretariat should present, on an annual basis, an overview of the planned activities as well as a justification in terms of their expected effects and costs.

Medium priority

27. The Secretariat should continue with its current activities to **promote awareness**. Nevertheless, additional activities focused on raising awareness amongst governmental officials of the Contracting Parties should be considered. In particular, the 'informal network' could be utilised to provide more understanding about how Contracting Parties can better use all the rights under the ECT and how to better deal with disputes.

G. International and Regional Cooperation

Medium priority

28. The Secretariat is encouraged to present an annual report to the Strategy Group with an overview of its cooperation activities in the previous year. Enhancing co-operation on specific topics with the following organisations, or some of them, after discussion in the relevant standing group, is welcomed:
- i. G20;
 - ii. *On international investment law and disputes*: OECD, UNCTAD, ICSID and UNCITRAL.

- iii. *On energy issues*: IEA, UNECE, IEF, IRENA (exploring cooperation in Renewable Readiness Assessments of ECT members), IPEEC and ICER – International Confederation of Energy Regulators;
 - iv. *On trade and financial issues*: EBRD, IBRD and WTO.
29. Apart from the current **engagements and cooperation with some regional organisations** (ASEAN, League of Arab States, African Union, SAARC), encourage practical co-operation with the following regional organisations: APEC, ERIA and ECO. Consider **assistance to regional projects** if (i) a good case can be made for such projects (for instance, if the project would clearly contribute to the realisation of the CONEXO strategy), (ii) there are voluntary contributions, and (iii) the Secretariat provides regular updates on the ongoing projects (for instance once a year).
30. Regional energy market integration is to be encouraged and supported within the broad energy Charter constituency by exploring possibilities and barriers of regional cooperation.

Implementation of these Review Conclusions

31. The implementation of these conclusions will require further decisions by the Conference, through the Secretariat's programme of work of each year, on the basis of available resources (both human and financial). The Secretariat is invited to report to the regular meetings of the Energy Charter Conference on such implementation, including any appropriate proposals for improvement and for addressing new challenges in energy markets.