

Final Act of the European Energy Charter Conference

Final Act as adopted (17/12/94)
Final Act of the European Energy Charter Conference

- I. The final Plenary Session of the European Energy Charter Conference was held at Lisbon on 16-17 December 1994. Representatives of the Republic of Albania, the Republic of Armenia, Australia, the republic of Austria, the Azerbaijani Republic, the Kingdom of Belgium, the Republic of Belarus, the Republic of Bulgaria, Canada, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the European Communities, the Republic of Finland, the French Republic, the Republic of Georgia, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, the Republic of Iceland, Ireland, the Italian Republic, Japan, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Republic of Moldova, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the Republic of Tajikistan, the Republic of Turkey, Turkmenistan, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Republic of Uzbekistan (hereinafter referred to as “the representatives”) participated in the Conference, as did invited observers from certain countries and international organizations.

CONF 104 (Text for adoption) (14/09/94)
Final Act of the European Energy Charter Conference

- I. The final Plenary Session of the European Energy Charter Conference was held at Lisbon on 16-17 December 1994. Representatives of Albania, Armenia, Australia, Austria, Azerbaijan, Belgium, Belarus, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, the European Community, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tadjikistan, Turkey, Turkmenistan, Ukraine, the United Kingdom, the United States of America and Uzbekistan (hereinafter referred to as “the representatives”) participated in the Conference, as did invited observers from certain countries and international organizations.

Interim text (25/06/94)
Interim text (20/06/94)
Final Act of the Conference on the Energy Charter Treaty

- I. The final Plenary Session of the Conference on the Energy Charter Treaty was held at (...) on (...). Representatives of Albania, Armenia, Australia, Austria, Azerbaijan, Belgium, Belarus, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, European Community, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tadjikistan, Turkey, Turkmenistan, Ukraine, the United Kingdom, the United States of America and Uzbekistan participated. Observers from the Organisation* for Economic Co-operation and Development, the International Energy Agency, [others] also participated in the meeting.

* *Ed. note:* The Interim text of 20 June uses the term “Organization”.

Background

Final Act as adopted (17/12/94)

Background

- II. During the meeting of the European Council in Dublin in June 1990, the Prime Minister of the Netherlands suggested that economic recovery in Eastern Europe and the then Union of Soviet Socialist Republics could be catalysed and accelerated by cooperation in the energy sector. This suggestion was welcomed by the Council, which invited the Commission of the European Communities to study how best to implement such cooperation. In February 1991 the Commission proposed the concept of a European Energy Charter.

Following discussion of the Commission's proposal in the Council of the European Communities, the European Communities invited the other countries of Western and Eastern Europe, of the Union of Soviet Socialist Republics and the non-European members of the Organization for Economic Cooperation and Development to attend a conference in Brussels in July 1991 to launch negotiations on the European Energy Charter. A number of other countries and international organizations were invited to attend the European Energy Charter Conference as observers.

Negotiations on the European Energy Charter were completed in 1991 and the Charter was adopted by signature of a Concluding Document at a conference held at The Hague on 16-17 December 1991. Signatories of the Charter, then or subsequently, include all those listed in Section I above, other than observers.

The signatories of the European Energy Charter undertook:

- To pursue the objectives and principles of the Charter and implement and broaden their cooperation as soon as possible by negotiating in good faith a Basic Agreement and Protocols.

The European Energy Charter Conference accordingly began negotiations on a Basic Agreement – later called the Energy Charter Treaty – designed to promote East-West industrial cooperation by providing legal safeguards in areas such as investment, transit and trade. It also began negotiations on Protocols in the fields of energy efficiency, nuclear safety and hydrocarbons, although in the last case negotiations were later suspended until completion of the Energy Charter Treaty.

Negotiations on the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects were successfully completed in 1994.

CONF 104 (Text for adoption) (14/09/94)

Background

- II. During the meeting of the European Council in Dublin in June 1990, the Prime Minister of the Netherlands suggested that economic recovery in Eastern Europe and the then Soviet Union could be catalysed and accelerated by co-operation in the energy sector. This suggestion was welcomed by the Council, which invited the Commission of the European Communities to study how best to implement such co-operation. In February 1991 the Commission proposed the concept of a European Energy Charter.

Following discussion of the Commission's proposal in the EC Council of Ministers, the European Community invited the other countries of Western and Eastern Europe, the Soviet Union and the non-European members of the OECD to attend a Conference in Brussels in July 1991 to launch negotiations on the European Energy Charter. A number of other countries and international organizations were invited to attend the Energy Charter Conference as observers.

Negotiations on the European Energy Charter were completed in 1991 and the Charter was adopted by signature of a Concluding Document at a Conference held at The Hague on 16-17 December 1991. Signatories of the Charter, then or subsequently, include all those listed in Section I above, other than observers.

The signatories of the European Energy Charter undertook

“to pursue the objectives and principles of the Charter and implement and broaden their co-operation as soon as possible by negotiating in good faith a Basic Agreement and Protocols”.

The Charter Conference accordingly began negotiations on a Basic Agreement – later called the Energy Charter Treaty – designed to promote East-West industrial co-operation by providing legal safeguards in areas such as investment, transit and trade. The Conference also began negotiations on Protocols in the fields of Energy Efficiency, Nuclear Safety and Hydrocarbons, although in the last case negotiations were later suspended until completion of the Charter Treaty.

Negotiations on the Energy Charter Treaty and the Energy Efficiency Protocol were successfully completed in 1994.

Interim text (25/06/94)

Interim text (20/06/94)

Background

- II. (Short factual history, including objectives, of the Energy Charter and Charter Treaty negotiations).

The Energy Charter Treaty

Final Act as adopted (17/12/94)
The Energy Charter Treaty

- III. As a result of its deliberations the European Energy Charter Conference has adopted the text of the Energy Charter Treaty (hereinafter referred to as the “Treaty”) which is set out in Annex 1 and Decisions with respect thereto which are set out in Annex 2, and agreed that the Treaty would be open for signature at Lisbon from 17 December 1994 to 16 June 1995.

CONF 104 (Text for adoption) (14/09/94)
The Energy Charter Treaty

- III. As a result of its deliberations the Conference has adopted the text of the Energy Charter Treaty (hereinafter referred to as “the Treaty”) which is set out in Annex 1 and Decisions with respect thereto which are set out in Annex 2 and agreed that the Treaty would be open for signature at Lisbon from 17 December 1994 to 16 June 1995.

Interim text (25/06/94)
The Energy Charter Treaty

- III. As a result of its deliberations the Conference on the Energy Charter Treaty adopted the following texts and Decision(s):

- (a) The Energy Charter Treaty
- (b) Annex EM, Energy Materials and Products
- (c) Annex NI, Non-Applicable Energy Materials and Products for definition of Economic Activity in the Energy Sector
- (d) Annex TRM, Notification and phase-out (TRIMs)
- (e) Annex N, List of Contracting Parties requiring at least 3 separate Areas to be involved
in a Transit
- (f) Annex VC, List of Contracting Parties which have made voluntary binding commitments
in respect of Article 13(3)
- (g) Annex ID, List of Contracting Parties not allowing an Investor to resubmit the same
dispute to International Arbitration at a later stage under Article 30
- (h) Annex IA, List of Contracting Parties not allowing an Investor to submit a dispute
concerning the last sentence of Article 13(1) to International
Arbitration

- (i) Annex P, Special sub-national dispute procedure
- (j) Annex G, Non applicable provision of the GATT and Related Instruments
- (k) Annex **SUT**, Provisions for trade agreements between Republics of the former Union of
Soviet TFU Socialist Republics
- (l) Annex D, Interim provisions for trade dispute settlement
- (m) Annex B, Formula for allocating Charter costs
- (n) Annex PA, List of signatories which do not accept the provisional application obligation
of Article 50(3)(b)
- (o) Annex T, List of Contracting Parties transitional measures
- (p) Decision With respect to Article 13(7) of the Treaty

all of which are annexed to this Final Act, and agreed that the Energy Charter Treaty would be opened for signature at (...) from (...) to (...).

The Energy Charter Treaty together with the listed Annexes and the annexed Decision(s) form an integral whole*.

*** Note**

The Treaty should incorporate by reference the Annexes to the Treaty. In the case of the Decision(s), it is noted that a state or Regional Economic Integration Organization which does not sign the Final Act, and which later accedes to the Treaty, would not be bound by such Decision(s) unless either

(a) the Treaty effectively incorporates the Decision(s); or

(b) the Treaty enables the Charter Conference to require accession to such Decision(s) as a condition of accession to this Treaty.

The Legal Sub-Group will consider this issue.

Interim text (20/06/94)
The Energy Charter Treaty

III. As a result of its deliberations the Conference on the Energy Charter Treaty adopted the following texts and Decision(s):

- (a) The Energy Charter Treaty
- (b) Annex EM, Energy Materials and Products
- (c) Annex NI, Non-Applicable Energy Materials and Products for definition of Economic Activity in the Energy Sector
- (d) Annex TRM, Notification and phase-out (TRIMs)
- (e) Annex N, List of Contracting Parties requiring at least 3 separate Areas to be involved
in a Transit
- (f) Annex VC, List of Contracting Parties which have made voluntary binding commitments
in respect of Article 13(3)
- (g) Annex ID, List of Contracting Parties not allowing an Investor to resubmit the same
dispute to International Arbitration at a later stage under Article 30
- (h) Annex IA, List of Contracting Parties not allowing an Investor to submit a dispute
concerning the last sentence of Article 13(1) to International
Arbitration
- (i) Annex P, Special sub-national dispute procedure
- (j) Annex G, Non applicable provision of the GATT and Related Instruments
- (k) Annex SUT, Provisions for trade agreements between Republics of the former Soviet
Union
- (l) Annex D, Interim provisions for trade dispute settlement
- (m) Annex B, Formula for allocating Charter costs
- (n) Annex PA, List of signatories which do not accept the provisional application obligation
of Article 50(3)(b)
- (o) Annex T, List of Contracting Parties transitional measures
- (p) Decision With respect to Article 13(7) of the Treaty

all of which are annexed to this Final Act, and agreed that the Energy Charter Treaty would be opened for signature at (...) from (...) to (...).

The Energy Charter Treaty together with the listed Annexes and the annexed Decision(s) form an integral whole*.

* Note

The Treaty should incorporate by reference the Annexes to the Treaty. In the case of the Decision(s), it is noted that a state or Regional Economic Integration Organization which does not sign the Final Act, and which later accedes to the Treaty, would not be bound by such Decision(s) unless either

- (a) the Treaty effectively incorporates the Decision(s); or
- (b) the Treaty enables the Charter Conference to require accession to such Decision(s) as a condition of accession to this Treaty.

The Legal Sub-Group will consider this issue.

Understandings*

Final Act as adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
Understandings

IV. By signing the Final Act, the representatives agreed to adopt the following Understandings with respect to the Treaty:

1. With respect to the Treaty as a whole

- (a) The representatives underline that the provisions of the Treaty have been agreed upon bearing in mind the specific nature of the Treaty aiming at a legal framework to promote long-term co-operation in a particular sector and as a result cannot be construed to constitute a precedent in the context of other international negotiations.
- (b) The provisions of the Treaty do not:
 - (i) oblige any Contracting Party to introduce mandatory Third Party Access; or
 - (ii) prevent the use of pricing* systems which, within a particular category of consumers, apply identical prices to customers in different locations.
- (c) Derogations from most favoured nation treatment are not intended to cover measures which are specific to an Investor or group of Investors, rather than applying generally.

Interim text (25/06/94)
Understandings

IV. The Conference on the Energy Charter Treaty agreed **to** the following Understandings with respect to the Energy Charter Treaty (hereinafter referred to as the “Treaty”) and Annexes:

1. To the Treaty as a whole

- (a) The Contracting Parties underline that the provisions of the Treaty have been agreed upon bearing in mind the specific nature of the Treaty aiming at a legal framework to promote long-term cooperation in a particular sector and as a result cannot be construed to constitute a precedent in the context of other international negotiations.
- (b) The provisions of the Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances.

* *Ed. note:* Only the Understanding to the Treaty as a whole is developed in this chapter. For the Understandings with respect to specific articles, see the chapter on the relevant article.

* *Ed. note:* CONF 104 uses the term “tariff systems” instead of “pricing systems”.

- (c) Derogations from most favoured nation treatment are intended to cover only conditions and rules applicable generally to Economic Activity in the Energy Sector.

Interim text (20/06/94)
Understandings

IV. The Conference on the Energy Charter Treaty agreed to the following Understandings with respect to the Energy Charter Treaty (hereinafter referred to as the “Treaty”) and Annexes:

1. To the Treaty as a whole

- (a) The Contracting Parties underline that the provisions of the Treaty have been agreed upon bearing in mind the specific nature of the Treaty aiming at a legal framework to promote long-term cooperation in a particular sector and as a result cannot be construed to constitute a precedent in the context of other international negotiations.
- (b) The provisions of the Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances.
- (c) Derogations from most favoured nation treatment are intended to cover only conditions and rules applicable generally to Economic Activity in the Energy Sector.

Compromise text [CONF 98] (22/04/94)
Ministerial Declaration

In signing the Energy Charter Treaty (hereinafter referred to as the “Treaty”) Ministers or their plenipotentiaries declare that the following understandings have been reached.

1. To the Treaty as a whole

- a) In view of the importance of energy equipment for the efficiency of energy activities, the signatories will enter into negotiations to explore the possibility of extending the trade provisions of the Treaty to cover an agreed list of energy related equipment.
- b) The provisions of the Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances.

ECT 7 [CONF 96] (17/03/94)¹
Ministerial Declaration To the Energy Charter Treaty

In signing the Energy Charter Treaty (hereinafter referred to as the Treaty) Ministers or their plenipotentiaries declare that the following understanding has been reached.

1. To the Treaty as a whole

- a) [In view of the importance of energy equipment for the efficiency of energy activities, the signatories will enter into negotiations to explore the possibility of extending the trade provisions of the Treaty to cover an agreed list of energy related equipment.]²
- b) It is the common understanding that the provisions of the Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances apart from location.

ECT 6 [CONF 82] (20/12/93)¹
Ministerial Declaration To the Energy Charter Treaty

In signing the Energy Charter Treaty Ministers or their plenipotentiaries declare that the following understanding has been reached.

1. To the Energy Charter Treaty as a whole

It is the common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances apart from location.

¹ General Comment: All Ministerial Declarations would be subject to Norway proposal for a new Article on Declarations and Statements to be incorporated in Part VIII – Final Provisions of the Charter Treaty.

² **Switzerland** and **Sweden** reserves. **Switzerland** is of the view that the language in the Ministerial Declaration is not sufficient and suggest the following approach:

- (a) Definition of Energy Related Equipment to be included in the Treaty reading:
“Energy Related Equipment”, based on the harmonized System (HS) of the Customs Cooperation Council and the Combined Nomenclature (CN) of the European Communities, means the items of HS or CN included in Annex RE.
- (b) Addition to Article 41(1)(d): “and Annex RE”.
- (c) Addition to Articles 4 and 35(1) after “Energy Materials and Products”: “and Energy Related Equipment”
- (d) Addition to Article 39(3):
 - (i) resume, as from its first meeting, negotiations aimed at finalizing Annex RE.

ECT 5 [CONF 72] (11/10/93)^{1,3}
Ministerial Declaration To the Energy Charter Treaty

1. To Charter Treaty as a whole

The Contracting Parties declare that it is their common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances apart from location.

ECT 4 [CONF 64] (07/07/93)¹
Ministerial Declaration To the Energy Charter Treaty

1. To Charter Treaty as a whole

The Contracting Parties declare that it is their common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances apart from location.

ECT 3 [CONF 60] (01/06/93)¹
Ministerial Declaration To the Energy Charter Treaty

1. To Charter Treaty as a whole

The Contracting Parties declare that it is their common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access or to prevent the charging of identical prices or tariffs to customers in different locations who are in similar circumstances apart from location.

ECT 2 [CONF 56] (01/05/93)¹
Ministerial Declaration To the Energy Charter Treaty

1. To Charter Treaty as a whole

The Contracting Parties declare that it is their common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access.

³ Note: Ministerial Declarations related to Articles 13(3), 36 and Annex A and T have been deleted because they have been overtaken by events.

Declarations*

Final Act as adopted (17/12/94) Declarations
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- V. The representatives declared that Article 18(2) shall not be construed to allow the circumvention of the application of the other provisions of the Treaty.
- VI. The representatives also noted the following Declarations that were made with respect to the Treaty:

...

CONF 104 (Text for adoption) (14/09/94) Declarations
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- IV. The representatives declared that Article 18(2) shall not be construed to allow the circumvention of the application of the other provisions of this Treaty.
- V. The representatives also noted the following Declarations that were made with respect to the Treaty:

...

Interim text (25/06/94) Declarations
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- V. The Conference on the Energy Charter Treaty noted the following declarations that were made with respect to the **Energy Charter Treaty** **(hereinafter referred to as the “Treaty”)** and Annexes:

...

Interim text (20/06/94) Declarations
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- V. The Conference on the Energy Charter Treaty noted the following declarations that were made with respect to the Energy Charter Treaty (hereinafter referred to as the “Treaty”) and Annexes:

...

* *Ed. note:* For the Declarations with respect to specific articles, see the chapter on the relevant article.

**The Energy Charter Protocol on Energy Efficiency and Related
Environmental Aspects**

Final Act as adopted (17/12/94)
The Energy Charter Protocol on Energy Efficiency and
Related Environmental Aspects

- VII. The European Energy Charter Conference has adopted the text of the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects which is set out in Annex 3.

CONF 104 (Text for adoption) (14/09/94)
The Energy Charter Protocol on Energy Efficiency and
Related Environmental Aspects

- VI. The Conference has adopted the text of the Protocol on Energy Efficiency and Related Environmental Aspects which is set out in Annex 3.

Interim text (25/06/94)
Interim text (20/06/94)
The Energy Efficiency Protocol

- VI. [The Conference on the Energy Charter Treaty considered and adopted the text of the Protocol on Energy Efficiency and Related Environmental Aspects annexed hereto.]

The European Energy Charter

Final Act as adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
The European Energy Charter

- VIII. The provisional Charter Conference and the Charter Conference provided for in the Treaty shall henceforth be responsible for making decisions on requests to sign the Concluding Document of the Hague Conference on the European Energy Charter and the European Energy Charter adopted thereby.

Interim text (25/06/94)
The European Energy Charter

- IX. The provisional Charter Conference and the Charter Conference provided for in the Energy Charter Treaty shall henceforth be responsible for making decisions on requests to sign the Concluding Document of the Hague Conference on the European Energy Charter and the European Energy Charter adopted therein.

Interim text (20/06/94)
The European Energy Charter

- IX. The provisional Charter Conference and the Charter Conference provided for in the Energy Charter Treaty shall henceforth be responsible for making decisions on requests to sign the European Energy Charter.

Documentation

Final Act as adopted (17/12/94)
CONF 104 (Text for adoption) (14/09/94)
Documentation

- IX. The records of negotiations of the European Energy Charter Conference will be deposited with the Secretariat.

Done at Lisbon on the seventeenth day of December in the year one thousand nine hundred and ninety-four.

Interim text (25/06/94)
Documentation

- X. Lists of meetings of the Conference on the Energy Charter Treaty and the Energy Efficiency Protocol are attached [not yet available].
- XI. The records of negotiations, including minutes, will be deposited with the Secretariat.

Done at

Interim text (20/06/94)
Documentation

- X. Lists of meetings of the Conference on the Energy Charter Treaty and the Energy Efficiency Protocol are attached (not yet available).
- XI. The records of negotiations, including minutes, will be deposited with the Secretariat.

Done at