

Brussels, 24 November 2010

Related documents: CC 402, CC 407
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**DECISION OF THE ENERGY CHARTER CONFERENCE**

**Subject: Road Map for the Modernisation of the Energy Charter Process**

**of 24<sup>th</sup> November 2010  
concerning Road Map for the Modernisation of the Energy Charter Process**

**The Energy Charter Conference,**

Reiterating their commitment to the principles of the Energy Charter of December 1991,

Recalling the purpose of the Energy Charter Treaty, which establishes a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter,

Acknowledging the important role of the Energy Charter Treaty for the promotion of energy trade, transit and investment, the resolution of energy disputes, and the development of energy efficiency,

Valuing the role of the Energy Charter Process as a policy forum among a broad constituency involving energy producing, consuming and transit countries,

Bearing in mind the essential role of energy for improving the quality of life and opportunities in developed as well as in developing countries,

Recognizing the drastic changes that have occurred in global energy relations since the 1990ies, in particular those implied by the growing share of non-OECD countries in global energy demand, the need for investments in the energy sector to meet global demand, the changed market balance between supply and demand, as well as measures to mitigate climate change, which dramatically affect the energy sector,

Taking note of changes in the membership structure of the Energy Charter Conference, in particular in relation to simultaneous membership in WTO and the EU,

Keywords: Road Map, Modernisation, Strategy Group

Recalling the Principles on Global Energy Security and the Plan of Action as adopted by the G8 St. Petersburg Summit in July 2006,

Taking note of the Conceptual Approach to the New Legal Framework for Energy Cooperation as presented by the President of the Russian Federation Dmitry Medvedev in April 2009, as one important contribution in relation to possible enhanced legal frameworks for energy co-operation;

Recognizing that the Energy Charter Process must reflect new developments and challenges in international energy markets and respond to broader changes across its constituency,

Reaffirming its support for the issues addressed in the Joint Statement adopted in Rome on 9 December 2009 (Message 847 Rev.2),

Recalling the outcome of the Review under Article 34(7) ECT in 2009, which the Conference took note of;

Emphasizing that the modernization of the Energy Charter Process and strengthening the Energy Charter Treaty are the keys to ensure that their potential to promote long-term co-operation in the energy field as well as energy security is fully used, and are the right way to strengthen the Energy Charter's authority, to ensure the continued commitment of existing members and to make it more attractive for those major actors which are currently not part of its constituency, but with whom the current members share common interests in the areas covered by the ECT,

Valuing the ongoing work undertaken within the Energy Charter Process and by the Energy Charter Secretariat in relation to core tasks, whose continued relevance shall not be diminished by the discussion on modernization,

Commending the Strategy Group for the work carried out in line with its Terms of Reference (CC 389) in relation to the modernization of the Energy Charter Process and the process of consultations over possible enhanced legal frameworks for energy cooperation,

1. Has adopted this Road Map for the Modernization of the Energy Charter Process as a strategic document to orientate the work of the subsidiary bodies and the Secretariat towards 2014, by integrating the outputs described in the Road Map on the basis of available resources within the annual Programmes of Work and in full respect for other work to be conducted under existing mandates;
2. Tasks the Strategy Group to monitor the implementation of this Road Map and to report on the progress made to the annual meetings of the Conference;
3. Intends to reconsider the Road Map and its implementation in connection with the next Review under Article 34(7) ECT.

## Road Map for the Modernization of the Energy Charter Process

### **Area A: Promotion of the Energy Charter and the Energy Charter Treaty**

#### CONTEXT

Global energy relations have changed drastically since the 1990ies. Demand for energy has increased significantly and will continue to grow. The predominant part of the increase in energy consumption and production is now in non-OECD countries. In 2006, G8 Leaders stated that ensuring sufficient, reliable and environmentally responsible supplies of energy at prices reflecting market fundamentals is a challenge for mankind as a whole. They underlined that the global nature of challenges and the growing interdependence between producing, consuming and transiting countries require strengthened partnership between all stakeholders to enhance global energy security.

The Energy Charter of 1991 in its Objectives Chapter refers to the promotion of the global energy market as much as of the European one. Since its first days, the Energy Charter Conference has considered the expansion of the Energy Charter Process's geographical coverage to be in the long-term interest of global energy co-operation (CC146). Following this logic, the legally binding framework created by the Energy Charter Treaty is open for accession by any state (Article 41), irrespective of its geographical location.

#### OBJECTIVE

In view of the challenges faced and the potential of the Energy Charter, the Rome Statement envisages the **targeted expansion and consolidation of its geographical scope**. Delegations have stated that a targeted enlargement would be an attractive option in terms of modernisation, if key energy players could be convinced to accede to or to ratify the Treaty. An integrated approach is necessary to achieve this objective.

#### OUTPUT

**An integrated Energy Charter Policy on Expansion, Outreach and Consolidation**, to be drafted by the Secretariat under the guidance of the Strategy Group for approval by the Conference, to include, *inter alia*:

- Clearly determined targets (countries, regions) for activities related to expansion and outreach to start with existing observers;
- Consolidation of the geographical scope of application of the Energy Charter Treaty; including technical support and advice to those Signatories that have not yet completed their national ratification procedures for the Treaty;
- Openness towards the integration of key energy players (producers, consumers and transit countries) outside the existing constituency;
- An inventory of tools for the promotion of new accessions to the Treaty and their feasibility within available resources;
- A clear vision on the complementary role of the Energy Charter in relation to other organizations, with a focus on core tasks and expertise available in the Energy Charter Secretariat;
- Guidelines for reporting and monitoring,
- An analysis based on the experience with existing partners of what prevents them from undertaking the next step towards their full membership in the Energy Charter Treaty, and proposals how to respond to their hesitation.

## Area B: Transit/cross-border trade

### CONTEXT

The role of transit of energy is growing globally. In 2008, the UN General Assembly noted that stable, efficient and reliable energy transportation, as a key factor of sustainable development, is in the interest of the entire international community. It recognized the need for extensive international co-operation in determining ways of ensuring the reliable transportation of energy to international markets through pipelines and other transportation systems (Resolution 63/210). Recently also the Russian President's "Conceptual Approach to the New Legal Framework for Energy Co-operation" ("Conceptual Approach", April 2009) underlined that smooth energy supply to international markets, including through transit systems, should be among the principles of cooperation in the sphere of energy.

Against this background, the Energy Charter Treaty's specific provisions on transit of energy are an important asset. In view of the complexity of applying the principle of Freedom of Transit from GATT and the Energy Charter Treaty to fixed energy infrastructure, the Conference decided that specific rules shall be addressed in a separate Protocol on Transit.

### OBJECTIVE

In view of growing trade across borders and the growing importance of secure and reliable transit, the Transit Protocol is more urgently needed than ever. In the Rome Statement, the parties aim at the **expeditious conclusion of the negotiations on the Transit Protocol**, as one of the common implementation mechanisms of the Energy Charter Treaty. Delegations have stated that the conclusion of the Transit Protocol would be the most visible improvement in view of the ECT's implementation. The objective of the Transit Protocol is

- **to ensure secure, efficient, uninterrupted and unimpeded transit;**
- **to promote more efficient use of transit infrastructure;**
- **to facilitate the construction or modification of transit infrastructure.**

### OUTPUT

#### **Finalization of the Energy Charter Protocol on Transit**, involving

- Formal negotiations in the Trade and Transit Group as mandated by the Conference;
- The participation of any Signatory of the Energy Charter of 1991 that wishes to participate in negotiations in accordance with Article 33 ECT with the aim of having a broad constituency to the Protocol;
- A clarification of the relationship of the draft Transit Protocol with legislation applicable within Regional Economic Integration Organizations as well as possible obligations of states under other international treaties;
- Reports of the Chairman of the Trade and Transit Group to the Conference on the progress towards the finalization of the Protocol;
- Adequate resources provided by the Secretariat as requested by the Conference;
- Support by the member states for the work of the Trade and Transit Group to pave the way for the expeditious finalisation of the Transit Protocol.

## Area C: Emergency response

### CONTEXT

The G8 Leaders stressed in 2006 that the vulnerability of critical energy infrastructure is one of the serious and linked challenges to be dealt with to tackle global energy security. Conflict situations have occurred in energy relations irrespective of existing bilateral arrangements and multilateral legally binding norms governing international energy relations. The role of the Energy Charter Process with regard to emergency situations has been a prominent topic of discussion in the Ad Hoc Strategy Group throughout 2009. Following the gas crisis of January 2009 it was asked whether the Energy Charter Process had a role to play in such a situation and whether the instruments at its disposal were adequate to contribute to an effective resolution of conflicts. There was a common view that the ECT has provisions of high relevance for emergency situations and that the Energy Charter Process should contribute to preventing or mitigating those.

### OBJECTIVE

The Rome Statement aims at the **resolution of controversies in case of emergency** in the context of common implementation mechanisms of the Energy Charter Treaty. The objective from the Energy Charter Treaty is **to secure established flows of energy** as a key requirement of energy security. The Energy Charter's approach is a dual one based on the legally binding provisions of the Energy Charter Treaty as well as the multilateral forum of peers established by the Charter Conference and its subsidiary bodies. Both aspects may be considered as comparative advantages, enabling the Energy Charter to address emergency situations with legally binding procedures and/or by diplomatic means.

### OUTPUT

The Strategy Group, with the assistance of the Trade and Transit Group and the Legal Advisory Committee as appropriate, to carry out preparatory work in relation to dispute settlement in cases of emergency, in full consideration of relevant obligations that member states might have undertaken in other frameworks as well as binding contractual obligations of corporate enterprises in this respect, and to present options:

1. To strengthen the implementation of ECT provisions relevant during emergency situations on the basis of enhanced state-to-state arbitration (Art. 27 (2)-(3) ECT) member states could, e.g., subscribe to additional binding rules, e.g. in form of a Protocol, which would oblige them to support an accelerated process of state-to-state arbitration (fast-track arbitration) in cases of emergency or commit themselves to accelerated procedures by means of a Conference Declaration. The elaboration of such options should include an analysis of the substantive ECT (and Transit Protocol) provisions which could be subject to arbitration in case of emergency as well as clear criteria to define emergency/crisis situations.
2. For effective conciliation in the event of a dispute over any matter arising from Transit, as foreseen under Article 7(7) ECT. Notwithstanding the fact that the Conference adopted Rules Concerning the Conduct of Conciliation of Transit Disputes (CC 103 Rev.1) uncertainties remain impeding the application of the procedure. An assessment of the status quo is necessary, including all Conference decisions, conclusions of the Conference Chairman or provisions of the draft Transit Protocol relating to Article 7(7) ECT and clarifying the relationship to arbitration under Article 27 ECT. For Conciliation to be effective, the term "any matter arising from that Transit" in Art. 7 (6) ECT should be interpreted in a way allowing the

Conciliator to balance his position between the interests of energy producers, transit countries and consumers, based on applicable rules and obligations as well as common interests. Besides enhanced dispute settlement procedures existing under the Treaty a contribution by the Charter Conference in promoting the implementation of the ECT, early warning mechanisms and in preventing and settling disputes should not be excluded.

#### **Area D: Investment Promotion and Protection**

##### CONTEXT

The enormous investment requirements along the entire energy chain are a serious challenge for global energy security. The supply side is characterised by the concentration of remaining oil and conventional gas reserves in a relatively small number of countries and specific impediments and uncertainties that affect the ability and willingness of parties to invest. Uncertainty over future energy related policies and the variety of energy sector models existing in the world make the situation even more complicated.

In 2006 the G8 leaders committed to transparent, equitable, stable and effective legal and regulatory frameworks, including the obligation to uphold contracts, to generate sufficient, sustainable international investments upstream and downstream. They further committed to enhance global energy security through actions aimed at improving the investment climate in the energy sector.

Non-discriminatory investment promotion and protection, including new investments into all energy chain links has also been listed as one of the main principles in the “Conceptual Approach”, together with the promotion of mutual exchange of energy business assets within investment activities.

The promotion and protection of investments, based on a predictable, transparent and non-discriminatory legislative environment is one of the strongest features of the Energy Charter Treaty. Member states have requested a strong focus of activities within the Energy Charter Process on core tasks like this one. The ability of the Energy Charter Treaty to strengthen energy security by means of its provisions on investment promotion and protection will depend on the effectiveness of such provisions under changing conditions. First, there are simultaneous moves to further liberalize investment regimes and to promote foreign investment in response to intensified competition for foreign direct investment (FDI) on the one hand, and to regulate and harness FDI in pursuit of broader policy objectives on the other. Second, in the context of global policies to address climate change the targets of investment will shift more and more towards carbon free and energy efficient applications. The existing investment provisions of the ECT will need to prove their continued relevance under the upcoming changes.

##### OBJECTIVE

In the Rome Statement, the parties called to a common responsibility and endeavour energy producers, transit and consumer countries to promote global energy security and investment. They recognised the need to improve legally binding rules governing international energy relations, investment and trade. Future work of the Charter with regard to investment promotion and protection will need to focus on **complementing the effectiveness of the relevant ECT provisions in view of major trends affecting investments into the energy sector.** The Energy Charter Treaty’s investment provisions should remain untouched in their fundamentals. The Energy Charter will need to assess

the instruments at its disposal in view of their continued ability to promote investments into all parts of the energy chain and to ensure non-discriminatory access to international energy markets.

The interaction between the states' climate change policies and the ECT investment regime merits further analysis, in the context of the promotion of low-carbon foreign investment, of trade and technological transfer with regard to renewable energy materials and products as well as energy efficiency, clean energy technology and equipment.

#### OUTPUT 1: PROMOTING THE INVESTMENT CLIMATE

The Investment Group should draft policy recommendations for member states based on an assessment of entry regulations for foreign investments in the energy sector within the Energy Charter constituency, to draw on

- A comprehensive Review of the exceptions to non-discriminatory treatment in the Blue Book of the Charter;
- An analysis of mutual exchanges of energy business assets within investment activities;
- With respect to major foreign investment projects the facilitation of direct investment contracts between foreign investors and the host country as another policy option to ensure legal certainty. Such contractual arrangements also endow host countries with the possibility to negotiate specific aspects with foreign investors, for instance with regard to the transfer of know-how, investment and environmental standards. Investment contracts can also lay the foundation for public-private partnerships related to the development and deployment of low-carbon technologies or joint research activities. In this context the Energy Charter Regional Task Force on Electricity Cooperation in Asia has requested to launch development of a **Model Investment Agreement** at its latest meeting in July 2010. An analysis for scope of a Model Investment Agreement and the Terms of Reference shall be prepared for further considerations by the Charter Conference.

#### OUTPUT 2: ASSESSMENT OF THE ECT PROVISIONS WITH REGARD TO LOW-CARBON INVESTMENT

The Investment Group should, in co-operation with the Trade and Transit Group elaborate an assessment of the provisions of the ECT's investment regime with regard to the subject of climate change and promotion of low-carbon investments, taking into account relevant assessments available from other international organizations. Depending on the result of this assessment, further steps could be envisaged.

### **Area E: Energy Efficiency**

#### CONTEXT

Energy efficiency has a key role to play as a tool which allows policymakers, simultaneously, to achieve the main objectives of energy policy – to improve energy security, to reduce adverse environmental impacts arising from the use of energy, including global warming, and to improve industrial competitiveness. The Plan of Implementation of the World Summit on Sustainable Development (WSSD, Johannesburg, 2002) called for improved access to reliable and affordable energy by improving energy efficiency. The Leaders of the G8, in 2006, committed to the promotion of energy saving and energy efficiency measures through initiatives on both national and international levels.

ECT members committed themselves to have particular regard to improving energy efficiency. The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) requires its participating states to formulate clear policy aims for improving energy efficiency and reducing the energy cycle's negative environmental impact. The Rome Statement acknowledges the important role of the ECT for the development of energy efficiency. At the same time, energy efficiency is a cross cutting subject matter for many international organizations and a tool for achieving and reconciling different objectives. Each organization has its specified characteristics in terms of constituency, attendance, working procedures, human resources and budget. The Energy Charter's strength lies in its assistance in implementing energy efficiency policies and in providing a forum for the exchange of information and technologies.

#### OBJECTIVE

Member states have requested that activities within the Charter be developed in partnership with other international organizations to ensure constructive synergies and avoidance of overlap. **Co-operation with other organizations working on matters related to the work of PEEREA needs to be developed in a win-win context looking to maximize the effects of current activities within each organization.**

#### OUTPUT

Options to ensure that the Energy Charter's work related to energy efficiency is to the extent possible effective and efficient in the context of its own specific strengths and the work undertaken by other organizations. Within the framework of the Energy Charter's policy on Expansion and Outreach, to cover also relations with other international organizations, this work shall, inter alia,

- Identify common areas of interest and criteria for co-operation, and in case that the members consider that there is a need, possible action could include:
  - Suitable modules of co-operation, such as hosting joint events, producing joint or complimentary reports, exchanging deliverables in support of each other's work or using each other's communication networks to progress on own agendas;
  - Practical and mutually agreeable options, including the necessary political and technical arrangements, to explore synergies between the Energy Charter and the IEA/OECD with regard to energy efficiency policy reviews and between the Energy Charter and the UNECE by facilitating the implementation of recommendations in PEEREA Reviews on priority energy efficiency investment projects under the UNECE "Global Energy Efficiency 21" project;
  - Possibilities to increase the benefit from PEEREA Reviews for the states undergoing them by strengthening their authority in the context of "Measurable, Reportable and Verifiable Measures" to address climate change, and thus by facilitating funding, assistance and technology transfer as necessary to implement climate change policies.



## Area F: Policy Forum, Interdependence, Energy Security

### CONTEXT

In 2006, G8 Leaders stressed that multilateral arrangements can further enhance national regulatory frameworks, supporting the principles of the Energy Charter and the efforts of participating countries to improve international energy co-operation. They committed to an enhanced dialogue on relevant stakeholders' perspectives on growing interdependence, security of supply and demand issues. This subject has been taken up in 2009 in the "Conceptual Approach", naming the indivisibility of sustainable global energy security and interdependence of all world energy exchange participants, mutual responsibility for global energy security, together with the recognition of security of supply (delivery) and demand (transparent and predictable marketing) among the principles for co-operation in the sphere of energy.

The Energy Charter was developed in the desire to improve energy security. The purpose of the Energy Charter Treaty is to establish a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefits. In addition to this legal framework, member states have always valued the Energy Charter Process as a policy forum. The 1991 Charter foresees a role of the Charter in the co-ordination of energy policies, as necessary for promoting the objectives of the Charter. The Rome Statement of 2009 reconfirmed these principles in the light of new challenges and developments, calling to a common endeavour energy producers, transit and consumer countries to promote global energy security and investment.

### OBJECTIVE

The Energy Charter Process should make a **contribution for a strengthened partnership between all stakeholders to enhance global energy security and to deal with growing interdependence** based on its specific expertise and constituency. The **Charter Process must evolve** to reflect new developments and challenges in international energy markets and respond to broader changes across its constituency. The implementation of the Energy Charter Treaty can only be effective as long as it is based on complementarities and mutual benefits. Against this background, the **Policy Dialogue within the Energy Charter Process shall be open-ended and be used actively to promote common objectives within a broad co-operative framework and to co-ordinate energy policies as appropriate.**

### OUTPUT

Strengthening the role of the Energy Charter as a Policy Forum on the basis of the Conference and its existing subsidiary bodies, with the aim of producing concrete results to enhance the capacity of the organization to achieve common objectives. Such work could include:

- Discussion of impulses coming from members, observers or other interested states or organizations invited;
- Analytical work by the Strategy Group to specify the concept of a common responsibility and endeavour of producers, transit and consumer countries to promote global energy security and investment, and with regard to possible instruments and actions to improve energy security in collaboration with other international organizations. This work could address issues raised by member states, such as access to international markets, their opening and increased competition on them, transparency of international energy markets, sovereignty over resources and the role of governments in relation to investment decisions;

- The continued use of the subsidiary bodies as platforms for members, observers and invited other parties to exchange information on energy policies, experience and developments relevant in the context of the Energy Charter Treaty and Process;
- The participation of the Strategy Group in the process of consultations over possible enhanced legal frameworks for energy co-operation;
- Secretariat support for further integration of the dialogue with industry in Charter activities, based on a strong role for the Industry Advisory Panel in consulting member states.

## **Area G: Management, finance and legal affairs**

### CONTEXT

As highlighted by the G8 in 2006, multilateral arrangements such as the Energy Charter have an important role to play in further enhancing reliable, stable and effective frameworks for energy co-operation. The “Conceptual Approach” calls for an efficient common implementation mechanism in support of a new system of energy instruments. In the Rome Statement, the parties affirmed a shared commitment to multilateral co-operation as the foundation of mutually beneficial energy relations and development. The Energy Charter Conference is meeting the requirement to ensure the Charter’s continued effectiveness through the modernization process. In this endeavour, the Conference and its subsidiary bodies need the support of the Secretariat.

### OBJECTIVE

Full targeted support to the Conference in carrying out its duties in the context of modernization to be provided by the Secretariat.

### OUTPUT

- Taking into account broad orientations from the Strategy Group and advice from relevant subsidiary bodies, the Secretariat shall present its Programmes of Work to the Conference for consideration and adoption in line with Article 34 (3)(d) ECT;
- The Secretariat will submit at the beginning of each year an indicative timetable of key activities, meetings and documents;
- In order to allow for an optimal preparation of all meetings, including in particular the annual Conference, the Secretariat will make key documents available in time to allow for a thorough consideration by the constituency;
- The Secretariat will produce an annual overview of its past activities;
- In correspondence with the detailed draft Programme of Work for the following year, the Secretariat shall elaborate the annual budget for that year, reflecting the principles of effectiveness and efficiency based on staff-months allocation, for approval by the Conference;
- In addition to sustainable national contributions encouragement of the use of voluntary contributions in line with Art. 37(5) ECT.