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Related documents: CC 467

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Report by the Chairman of the Strategy Group

The Energy Charter Conference at its 24th Meeting held on 5th/6th December 2013 **took note** of the Report by the Chairman of Strategy Group as contained in document CC 467 (attached hereto).

Keywords: Report, Chairman, Strategy Group

Report by the Chairman of the Strategy Group

This report provides an overview of the activities of Strategy Group of the Energy Charter (StG) in 2013. The Group convened three times in 2013: on 7 March, on 28 May and on 23 October 2013.

In 2013, the Strategy Group promoted a number of policy initiatives aimed at strengthening the authority, modernisation and effectiveness of the Energy Charter Process.

Updated Energy Charter

At its 23rd meeting in Warsaw, the Energy Charter Conference decided to launch a process towards the adoption of an updated basic political declaration of the organisation. While the principles of the European Energy Charter of 1991 (EEC) have not lost their currency and will continue to be a reference for the Charter's legal and political framework, there is a view that the text of the Charter contains some outdated language that should be updated to raise the interest of new countries to join the Energy Charter Process.

By the decision taken in Warsaw, the Secretariat was tasked to analyse more clearly the objectives of the update of the European Energy Charter (UEC), its possible scope and potential risks. Furthermore, the Strategy Group, with the assistance of the Legal Advisory Committee, was tasked with identifying ways of agreeing on the UEC without compromising the Energy Charter Treaty's legal framework, which has explicit references to the EEC. Two meetings of the Strategy Group and three meetings of the Legal Advisory Committee were held to implement this task.

A preliminary draft Assessment of the Objectives, scope, benefits and costs/risks was circulated on 11 March 2013 (Message 1053), shortly after the first meeting of the Strategy Group. The purpose was to pre-consult delegations on the methodology of the Assessment, which had been inspired by the “Impact Assessment Guidelines” of the European Commission (SEC(2009)92). The second draft Assessment was circulated as StG 46 for discussion at the meeting of the Strategy Group on 28 May 2013.

The contribution of the Legal Advisory Committee with regard to the task from Warsaw concerned two main questions first, how to ensure that references in the Energy Charter Treaty to the European Energy Charter could be replaced with those to the Updated Energy Charter, and second, the role of signing the Updated Energy Charter by new countries in view of their status in the Energy Charter Process.

The Report by the LAC (StG 45) discussed the following options with regard to the first question: an amendment to the ECT, a Protocol or a Declaration as defined in Article 1(13)(a) and (b) of the ECT and an interpretative note pursuant to the Vienna Convention

on the Law of the Treaties. The main problem identified with the amendment option was the requirement of ratification in most, if not all Contracting Parties. Neither a Protocol nor a Declaration under the ECT was deemed suitable in view of their possible scope as defined in Article 1(13). The Interpretative Note under the Vienna Convention was considered by most LAC members as the best option, but there were concerns in some quarters that an argument that the change of reference from the European to the Updated Energy Charter would go beyond the scope of an interpretation.

When discussing the LAC report (StG 45) at its meeting on 28 May 2013, the Strategy Group could not reach consensus on ensuring the link between the UEC and the ECT on the basis of an Interpretative Note under the Vienna Convention on the Law of the Treaties. Instead it was suggested not to replace the EEC by the UEC, but to allow the two documents to exist in parallel, as had already been discussed in the draft Assessment (StG 46) as “policy option II” (“Update and partial replacement of the European Energy Charter”).

With regard to other aspects of the Secretariat’s Assessment (StG 46), the Strategy Group discussed the scope of the Updated Energy Charter and in particular the possibility of adding new substance. It was argued that if new substance were added, there would need to be a convincing justification for that. At the conclusion of the meeting, the Strategy Group requested the Secretariat to improve the Assessment and requested the LAC to elaborate on formal aspects with regard to the signing of the UEC.

At its meeting on 23 October 2013, the Strategy Group supported the Secretariat's revised Assessment of the objectives, scope and risks of updating the European Energy Charter (StG 53). The objectives identified included strengthening, cohesion within the constituency and the political authority of the Energy Charter Process, supporting the implementation of the policy on Consolidation, Expansion and Outreach with the aim to facilitate the expansion of the geographical scope of the Energy Charter Treaty and Process, engaging in structured dialogue with non-signatories of the European Energy Charter to promote the principles of the Charter and its framework for cooperation on the global scale; and modernising the European Energy Charter as the basic political declaration of the Energy Charter Process.

The Strategy Group also accepted the findings of the Legal Advisory Committee on the outstanding formal issues (StG 56). The LAC had concluded that the UEC would only be effective for those states/IOs who positively express their agreement to it. In addition, three possible functions of signing of the UEC linked to the ECT were discussed first, as a condition for observer status, second, for the participation in negotiations of Energy Charter Protocols and Declarations and third, as a condition for accession. The final position on this issue was provided in StG 56 to the Strategy Group at its meeting in October. Observer status was identified as the only possible function, provided the relevant procedures are changed.

Having fulfilled the tasks from the Warsaw mandate, the Strategy Group agreed on a draft negotiation mandate, which it resubmitted to the Charter Conference for adoption (CC 462).

Political Conference Chairmanship

Another key project of the Strategy Group in 2013 was to agree on a new Practice of Conference Chairmanships. Following on from a discussion at the meeting of the Energy Charter Conference in Warsaw in 2012, there was a view that as the Energy Charter Conference would benefit from political leadership by assigning annual Chairmanships to countries rather than individuals. Another objective was to introduce more rotation and predictability by agreeing on a medium-term list of countries that would hold the Chairmanship and vice chairmanships in the years to come.

A first policy paper was discussed at the meeting in March (StG 40) and a draft Practice was put forward at the meeting in May (StG 47). Following discussion, the Secretariat was requested to revise the draft Practice for the next meeting. The new draft (StG 54) was discussed and accepted by the Strategy Group at its meeting in October. Delegations in the Strategy Group were supportive of the idea to designate Ministers or high level representatives as Conference Chairpersons. The new Practice is intended to increase the level of ownership of the member states and to allow them to promote concrete policy objectives and projects within the decision making body. The discussion on this proposal immediately provoked the interest of a number of countries considering assumption of the role of Chairmanship on a voluntary basis once the Conference agrees on the new Practice. The draft was submitted by the Strategy Group to the Conference for adoption (CC 464).

De-restriction of Conference documents

Since the beginning of the Energy Charter Process, official documents of the Energy Charter Conference have been restricted. Such documents, be it decisions, reports or discussion papers, have been available for governments of members and observers only. Major developments within the Process have thus taken place without significant public awareness.

The proposal to de-restrict Conference documents had been put forward, back in 2012. The purpose of this initiative was to ensure greater public participation in the Energy Charter Process. There was a view that discussions among the government representatives and the work of the Secretariat could benefit from research activities throughout the constituency and in outreach countries and that those could play an important role in promoting the Charter's policy initiatives. However, such activity depended on the availability of information on the organisation's activities beyond press releases and public statements.

For the meeting of the Strategy Group in March, the Secretariat started preparing a directory of documents reviewed by the Conference from its inception in 1994 until 2012 ("CCDEC") and proposed to de-restrict those documents. A corresponding draft decision, containing also a new default procedure to make future CC documents available to the public (StG 43) was agreed in principle at the meeting in May, pending the correction of a number of inconsistencies in the list of CCDEC documents. On the basis of a revised

list and draft decision (StG 43 Rev) agreement could be reached in October. A draft decision was forwarded to the Conference for approval (CC 463).

Forum for Energy Dialogue

As in previous years, delegations made active use of the Forum for Energy Dialogue, a policy forum within the Strategy Group to exchange information on important recent developments, e.g., national or multilateral energy strategies, developments with regard to the structure of domestic markets, and the creation of new institutions dealing with energy issues.

Japan gave updates on changes in its energy policy after the general elections in December 2012 and its goal as presented by Prime Minister Shinzō Abe to provide stable energy supplies and reduce energy costs. France informed the delegates about a national debate on energy transition. The objective was to have a more precise idea on the energy mix in the medium term (2020-2030), outlining possible scenarios and defining the way to achieve the goals. The debate followed a novelty approach as it involved local governments as well. Finland reported about the preparation of a new energy and climate strategy.

Moldova reported on its new energy strategy until 2030 (published in the official monitor on 8.02.2013 as No. 27-30, item 146). The delegation discussed various options in view of the integration of the Moldovan electricity market with its neighbours, in particular Ukraine and the European Union. The integration with European energy markets was taking place against the background of parallel integration efforts in the East, in particular the Common Economic Space.

The Netherlands shared information about the Dutch "Energy Agreement for Sustainable Growth", a unique agreement concluded by a multi-stakeholder group including the government, civil society and commerce. The outcome of which was a set of broadly supported provisions regarding energy saving, clean technology, and climate policy.

The Russian Federation reported on the signing of the EU-Russia Energy Roadmap 2050, which would open new possibilities in the cooperation with the EU. The Russian delegation then also reported about major energy events such as the Asian-Pacific Energy Forum and the Gas Exporting Countries Forum Summit in Moscow.