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The following statement was issued by Dr Ria Kemper, Secretary General of the Energy Charter Secretariat, concerning the results of the 12th Meeting of the Energy Charter Conference in Brussels on 26th June 2003:

"The main issue for discussion at the twelfth meeting of the Energy Charter Conference was the proposal to finalise the text of an Energy Charter Protocol on Transit, which has been under negotiation among the Energy Charter's 51 member-states since early 2000. The aim of the Transit Protocol, which builds on the existing transit-related provisions of the 1994 Energy Charter Treaty, is to establish an enhanced set of rules under international law governing cross-border flows of energy in transit via inter-state pipelines and grids.

At the last meeting of the Charter Conference in December 2002, agreement was reached that only three issues in the draft text of the Protocol were to be considered as unresolved. These are: the European Union's proposal for a Regional



The Protocol sets new rules for transit via inter-state pipelines

Economic Integration clause, the Russian proposal for a so-called "Right of First Refusal" for existing transit shippers, and the issue of transit tariffs. Since that time, given that these unresolved issues relate primarily to differences in position between the European Union and Russia, efforts have

focused on finding solutions to them through bilateral consultations between these two parties, with the aim of developing an overall "package" text that all delegations could accept.

It is the common assessment of both the EU and Russia that their consultations during the first half of 2003 have led to substantial progress in finding

mutually acceptable solutions to the outstanding issues. On this basis, a proposal for finalisation of the Transit Protocol was put to the Charter Conference for approval. Contrary to our expectations, however, it did not prove possible to achieve a final consensus in support of concluding the text of the Protocol on this basis. At the same time, agreement was reached on the procedures for taking forward our work on the remaining issues, with the aim of achieving a final decision as early as possible.



Ria Kemper: "Given political will, adoption of the Protocol in 2003 is achievable"

I am naturally aware of the strong interest within the entire Energy Charter constituency in early completion of our work on the Transit Protocol, given the time and effort spent on this by all our member-states over the last three and a half years. In this context, it should be emphasized that both the EU and Russia underlined at the Conference their firm interest in and commitment to finalisation of the Transit Protocol as soon as possible. Our objective, therefore, remains to achieve a situation where the text of the Transit Protocol will be finalized in time for its formal adoption before the end of 2003. If all sides involved show sufficient political will, I am confident that this goal can be reached.

Finally, I should like to underline the importance of the Transit Protocol in the context of achieving one of the key objectives of the Energy Charter process, namely ratification of the Energy Charter Treaty by Russia, which signed the Treaty in 1994 but which has yet to ratify it. As is well known, the Russian State Duma has declared completion of the Transit Protocol to be one of its conditions for eventual Russian ratification of the Treaty."

NIGERIA BECOMES OBSERVER TO THE ENERGY CHARTER

The Federal Republic of Nigeria, one of the world's leading oil exporters, has become an observer-state to the Energy Charter Conference.

At its meeting on 26th June in Brussels, the Energy Charter Conference unanimously approved the application for observer status submitted by the government of Nigeria, which becomes the eighth member-state of OPEC to be granted observership rights within the Energy Charter process (*the others being Algeria, Iran, Kuwait, Qatar, Saudi Arabia, the United Arab Emirates, and Venezuela*). This entitles the Government of Nigeria to attend all meetings of the Energy Charter Conference and its subsidiary working groups, which meet on a regular basis in Brussels.



Nigeria, one of the world's major oil exporters, is the 8th OPEC member-country to become an observer to the Energy Charter



Dr Rilwanu Lukman

In submitting Nigeria's observership application, Dr Rilwanu Lukman, former President of OPEC and Adviser on Petroleum and Energy to the President of Nigeria, noted that "Nigeria wishes to participate in the international forum for energy dialogue established by the Energy Charter Treaty, which we believe will further enhance cooperation between energy producers and consumers

world-wide".

According to Henning Christophersen, Chairman of the Energy Charter Conference, Nigeria's admission as an observer-state "underlines the growing interest from countries beyond the Energy Charter's original constituency in our organisation's role as an energy policy forum, involving the governments of producers, consumers and transit countries". Christophersen noted also that Nigeria's application for observership was the result of an increased dialogue over the past year between the Energy Charter and OPEC as an institution. "Participation by OPEC members in the Energy Charter process as observers is a logical development in this dialogue, and I therefore warmly welcome the acceptance of Nigeria's application", commented Christophersen.

Originally established in the early 1990s as a mechanism for promoting east-west energy cooperation in Europe, the Energy Charter has in

recent years expanded the geographical focus of its work to encompass a wider "Eurasian dimension". Japan, Australia, Mongolia and the five states of Central Asia are all full members of the Energy Charter, having signed the organisation's legal foundation, the 1994 Energy Charter Treaty. The Charter has a growing number of observer states, with observership applications having been accepted in recent years from the People's Republic of China, the Republic of Korea, and the Islamic Republic of Iran.

OPEC SECRETARY GENERAL ON ECT

"Another area where there is potential for stronger ties between OPEC Members and the nations of Europe is the Energy Charter Treaty. Our Members are naturally interested in developments concerning this legal framework, which will no doubt have a significant influence on the future of Europe's energy supplies. Indeed, seven of our Members already have observer status to the Energy Charter Conference.



A further significant step was the hosting of a Workshop on the Energy Charter Treaty by the OPEC Secretariat earlier this year, at which a very interesting and fruitful dialogue took place, and there will doubtless be others to follow."

Extract from speech by OPEC Secretary General Dr Alvaro Silva Calderón to the European Parliament's "Energy Choices for Europe" Conference, Brussels, 5 March 2003

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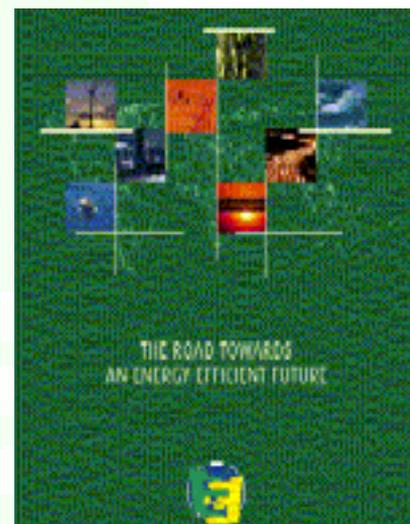
"THE ROAD TOWARDS AN ENERGY EFFICIENT FUTURE" - REPORT AVAILABLE

The Energy Charter Secretariat has now published, in English and Russian, the report entitled "The Road to an Energy-Efficient Future" which was submitted to the "Environment for Europe" Ministerial Conference of the United Nations Economic Commission for Europe (UN-ECE) in Kiev on 21-23 May (see full report in issue no. 14 of "Charter News").

Compiled with the financial support of the governments of Denmark and Finland, the report gives a comprehensive overview of progress made in improving energy efficiency by UN-ECE and PEEREA participating states since the last "Environment for Europe" Ministerial in Århus, Denmark in 1998. Energy efficiency is assessed in the report from the angle of its contribution to addressing climate change, increasing the security of supply, and supporting restructuring in transition economies.

In particular, the report assesses the changing environment in which governments are now required to pursue energy efficiency objectives, within the context of energy market liberalization in many parts of the UN-ECE constituency, and draws some conclusions as to priority sectors of the economy that should be focused on in terms of energy efficiency gains. The role of the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) as a vehicle for sharing best-practice recommendations and advice on energy efficiency policies among governments in the Eurasian area is underlined, and was also explicitly recognized in the Statement on Energy Efficiency adopted by the Kiev Ministerial Conference (see below).

Copies of the report, in English and Russian, can be ordered by those interested from the Secretariat (see contact details on page 1).



Cover page of the report

UN MINISTERIAL CONFERENCE NOTES ENERGY CHARTER'S REPORT

"We support further efforts to improve energy efficiency and promote renewable energy sources as a means of meeting environmental objectives. Our Statement on Energy Efficiency reaffirms these goals. We also note the progress report by the Energy Charter Secretariat on implementing the provisions in the area of energy efficiency, and invite it, in cooperation with other relevant international organisations, to report on further progress on energy efficiency efforts at our next conference."

Extract from Ministerial Declaration adopted at the United Nations Economic Commission for Europe's Fifth Ministerial Conference on "Environment for Europe", Kiev, 21-23 May 2003

"We consider that the Århus Declaration, including the *Policy Statement on Energy Efficiency* and the *Guidelines on Energy Conservation*, are political commitments that, together with the Energy Charter's Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA), for many countries offer a long-term framework for energy efficiency policy and programme development..."

We note the report "Towards an Energy Efficient Future" on the progress in implementation of the energy efficiency commitments made within the Århus Declaration, prepared by the Energy Charter Secretariat... We decide to encourage national efforts to ensure that our environmental policies and programmes designed to mitigate climate change, and to achieve the Kyoto targets for those who have them, properly incorporate energy efficiency objectives and measures... We decide (also) to invite the Energy Charter Secretariat in cooperation with other relevant organisations to report through the UN-ECE on progress in implementing international energy efficiency provisions."

Extract from Statement on Energy Efficiency adopted by Ministers at the "Environment for Europe" Ministerial, Kiev, 21-23 May 2003

ENERGY CHARTER DEVELOPS BEST-PRACTICE GUIDELINES ON ENERGY MARKET RESTRUCTURING

On 26 June the Energy Charter Conference welcomed a set of Best-Practice Guidelines on Restructuring (including Privatisation) in the energy sector. The aim of the Guidelines is to assist those countries in the Charter's constituency that are in the process of transition to competitive domestic energy markets. The Guidelines provide advice for the governments of such countries, based on analysis of the experience gained and lessons learned by countries that have already introduced competition and privatization in their energy sectors.

Addressing Barriers to Investment

The origins of the Best-Practice Guidelines date back to a report on Energy Investments submitted jointly by the Energy Charter Secretariat and the International Energy Agency to the G8 Energy Ministers at their meeting in Moscow in 1998. The Energy Charter Conference subsequently mandated the Secretariat to carry out follow-up work on how to address the barriers to attracting energy sector investments. The Best-Practice Guidelines were developed in accordance with this mandate, based on a thorough analysis of experience gained to date in the Energy Charter's constituency in restructuring domestic energy markets. Work on the Guidelines was conducted through the Charter's Investment Group, drawing also on input from relevant international bodies.



Investment Group
Chairman Argyrios
Fatouros

As the Chairman of the Charter's Investment Group Professor Argyrios Fatouros (Emeritus Professor of International Economic Law at the National University of Athens) underlines, the aim of the Guidelines is not to impose any specific template for restructuring energy markets, to be applied in all cases.

"Our member-states are under an obligation, under the Energy Charter Treaty, to work towards the development of open, competitive energy markets", notes Professor Fatouros. "But this does not mean that they have an obligation to restructure national energy markets in a particular way. For example, there is no obligation on our member-states to privatize entities operating in their national energy sectors."

"However, where countries do elect to undertake a process of energy market restructuring, including privatization, it is important that they do so in as

efficient, cost-effective and socially responsible manner as possible. In this situation, there is clearly much to be gained by studying and drawing conclusions from the experience of countries that have already gone through the same process. And the Energy Charter, bringing together as it does the transition economies of Eastern Europe and the CIS with leading OECD member-states, provides an excellent forum within which to do this".

The Best-Practice Guidelines are structured according to six major themes – the processes needed to create competitive energy markets; how to maintain competition in the energy sector; regulation of the market; how to prepare entities for privatization and/or competition; aspects of conducting the process of privatization; and advice on how to monitor or "benchmark" progress achieved in the restructuring process. Within each of these categories, the Guidelines seek to identify the main obstacles that may arise during the process of energy market restructuring and to suggest optimum approaches to tackling them. Specific case examples from the experiences of energy market restructuring acquired in both OECD states and transition economies are quoted in illustration of many of the recommendations made.

Issues Addressed

Among the issues addressed and recommendations made in the Guidelines, the following can be highlighted:

- **Frameworks:** Successful privatization requires the development of a functioning, stable and predictable legislative and institutional framework, as well as a political environment that inspires confidence. Restructuring and privatization programmes should take into account any history of non-payment and/or services that have in the past presented problems relating to pricing issues. The introduction of bankruptcy procedures and the support of a right to disconnect non-paying entities is one way to mitigate future debt-collection problems. Where appropriate, human needs should be addressed by building a safety net, on which individual customers can rely in times of temporary adverse circumstances to avoid disruption of service.
- **Accounting:** Regulatory and competition authorities must have full access to the accounts of companies with monopolistic functions (if any), and other companies under regulatory/competition supervision. Regulatory and competition frameworks should include

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disclosure rules, ensuring an easy and prompt access to all relevant cost data and specify sanctions for profit-shifting.

- *Prices and Subsidies:* Restructuring and privatization programmes should eliminate state subsidies as far as possible. Where this is not possible or feasible, programmes should define the criteria and amounts of subsidy and, if possible, the process of phasing out. Energy taxes, duties, fees, and charges should have an explicit legal basis. Tax laws and regulations should be easily accessible and understandable, and clear criteria and procedures should guide the administrative discretion in their application.

- *Competition:* In emergent markets there is often a need for a gradual introduction of competition. The market organization should be designed with due regard to this constraint, without losing sight of the ultimate objective. Undue market power, such as monopolistic and/or concentrated markets in the energy sector should be identified, together with its sources, such as, for example, laws granting exclusivity, and concessions. To the extent possible, price controls should be removed. Where appropriate, "same fuel" competition (e.g. gas-to-gas) should be encouraged, by phasing out the practice of linking the price of a fuel to that of another (e.g. natural gas prices linked to oil prices), and thus allowing prices to be truly based on the supply and demand situation for distinct energy products.

- *Regulation:* Various options for securing the independence of the regulator, such as terms of appointment and sources of funding, should be considered. Whenever possible, options should be chosen that create a system of checks and balances and enhance the regulator's financial independence, such as, for example, fixed term appointment and funding through license fees. The regulator and competition authority must have full access to accounts of companies with monopolistic functions (if any), and other companies under regulatory/competition supervision. The basis for price and tariff determination must be unambiguously defined, clearly prescribed, reviewed from time to time, and transparent at all times to the public.

- *Employment:* The effects of competition on employment and the ways to deal with the likely decrease of the size of the workforce (which may be due to, *inter alia*, technological change, reduction in non-core personnel, and outsourcing of some functions)

should be accounted for. Programmes should thus be considered that help deal with these effects in a socially consensual manner, e.g. through skill profile changes, voluntary early retirement schemes, re-training and redeployment, working time reductions, etc. Strategies that enhance adaptability and employability, rather than workforce conservation, need to be developed.

- *Legislation:* Proper company law and rules of corporate governance, with a view to ensuring proper protection for all investors and particularly those with minority shareholdings, must be introduced. Government must indicate the matters on and circumstances in which it might exercise its vote as a residual shareholder. Controls must be established over remaining state entities in the sub-sector to ensure they do not discriminate against private sector companies in favour of their own subsidiaries. Adequate transparency in the privatization process must be ensured. Evaluation criteria for bids for companies should be clearly set out in advance.



Under the ECT, signatories are committed to develop open, competitive energy markets

- *Monitoring the process:* A permanent vehicle must be provided for consultation and reconciliation between government, business, consumers, unions, environmental groups and other stakeholders who may be affected by the restructuring and/or privatization process. A clear set of criteria should be put in place, against which the merits of grievances and proposed solutions would be assessed.

Next Steps

Following the positive consideration given to the Best-Practice Guidelines by the Energy Charter Conference, follow-up work is envisaged in order to raise awareness of them and stimulate debate as to their potential application in individual cases. "We see the Guidelines as an ongoing project, with the Charter's member-governments looking to develop a continuous dialogue with industry and other stakeholders on their design and implementation, in order to reflect new developments in future versions" comments Professor Fatouros. Specifically, the Secretariat plans to organize a Workshop on the Guidelines in Brussels during the early part of 2004, with the participation of industry, academics and representatives from governments and international financial institutions. The text of the Best-Practice Guidelines, in English and Russian, can be downloaded from the Energy Charter web-site, and hard copies can also be obtained from the Secretariat (*see contact details on page 1*).

ANNOUNCEMENT OF ENERGY CHARTER SECRETARIAT'S AUTUMN EVENTS

The Energy Charter Secretariat is organizing two major external events during the autumn of 2003, details of which are given below. Participation in both events, for which no fee is charged, is by invitation only, which has been extended to all the Energy Charter's member-states. At the time of writing, however, a limited number of places remain available in both cases for interested external participants.

Those interested in receiving more information on these events, and in the possibility of attending, should contact the Secretariat (see contact details on page 1).

Seminar on "Regional Energy Cooperation in Central Asia and the Role of the Energy Charter Process", Tashkent, 23-24 September 2003



This Seminar, organised jointly by the Energy Charter Secretariat and the Government of Uzbekistan, has the objective of promoting dialogue on the potential of the Central Asian region as an energy supplier to world

markets, and the related investment opportunities it can offer.

The Seminar will also review the ongoing process of energy market restructuring in the Central Asian region, and will focus on the role of the Energy Charter Treaty as a legal instrument for promoting stable cooperation on energy issues among the states of Central Asia, and between them and their neighbours. Participation is expected from representatives of the governments of Energy Charter member-states and non-member countries in the Asian region, energy companies, international organizations and financial institutions.

Among the keynote speakers will be Mr Kazim Tulyaganov, Deputy Prime Minister of Uzbekistan, Dr Ria Kemper, Secretary General of the Energy Charter Secretariat, and representatives of the governments of Japan, Russia, China, Iran, South Korea, Mongolia, and the states of Central Asia.

Conference on "Eurasian Natural Gas – Opportunities and Risks", Brussels, 12-13 November 2003



This Conference is being organized by the Energy Charter Secretariat jointly with the European Union of the Natural Gas Industry (Eurogas) and the International Association of Oil and Gas Producers (OGP). It will aim to bring together key decision-makers from gas producing states, European governments, energy companies, regulators, financial institutions and parliamentarians for a focused debate, held under "Chatham House rules", on the key issues affecting the development of the Eurasian natural gas market over the coming twenty years.

Among the key issues for discussion will be the interdependence of individual gas markets in the Eurasian area, the security of natural gas supply for future decades, the obstacles to creating a competitive natural gas market in Eurasia, the role of LNG in the Eurasian continent's supply mix, and the legal and regulatory conditions needed to establish competitive natural gas markets.

The working languages of the Conference will be English and Russian, with simultaneous interpretation provided.

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GAZ DE FRANCE CHAIRMAN ON ENERGY CHARTER TREATY'S ROLE



"In my view, the priority is to maintain open and constructive dialogue between all players along the gas chain while taking care to avoid the development of a situation which, over the long run, would be detrimental to producers and buyers alike.

The risk is very real. The quantities of gas supplied to Europe by non-European producers will continue to increase rapidly in the future, in both absolute and relative terms. Growth in demand will lead to greater interdependence between European buyers and producers.

Let us hope that the energy dialogue already initiated as part of the Energy Charter Treaty will create a climate of trust that favours investment and partnership, be it financial, commercial or technological."



Extract from Keynote Speech to the 22nd World Gas Conference, Tokyo, 3 June 2003 by Mr Pierre Gadonneix, Chairman and Chief Executive Officer, Gaz de France

RUSSIAN DEPUTY PRIME MINISTER ON TRANSIT PROTOCOL

"Ratification of the Energy Charter means only one thing for Russia as of today - namely, completion of negotiations and reaching final formulations on the one single protocol that the Energy Charter Treaty did not include. That is the Protocol on Transit....



Viktor Khristenko © BBC.com

Consultations on this Protocol are still being conducted. As of today, the Russian Federation still has a number of serious concerns. We have three points, which are quite serious ones for us, and on which we would like to find satisfactory answers. Once we achieve satisfactory results on this Protocol, we will be ready to sign it. So far, there is no result. Therefore, we are proposing to continue the work and seek a mutually acceptable outcome - and then, correspondingly, options will open up with regard to the Energy Charter Treaty in general."

Extract from press-conference given in Brussels on 23 June 2003 by Viktor Khristenko, Deputy Prime Minister of the Russian Federation

UK-RUSSIAN STATEMENT ON ENERGY CHARTER TREATY



"The United Kingdom recognises the efforts of the Russian Federation to apply provisionally the principles of the Energy Charter Treaty, as well as its progress towards membership of the World Trade Organisation, which will underpin and strengthen the reform programme undertaken by the Government of the Russian Federation.

These efforts will create favourable conditions to attract foreign investment and participation by foreign enterprises in developing Russia's economy and energy sector.

We regard our bilateral dialogue as a component of a wider energy dialogue between the Russian Federation and the European Union, and will seek to ensure that they are complementary."

Extract from Joint UK-Russian Energy Communiqué adopted at the "UK-Russia Energy Conference: Long-Term Energy Partners", London, 26 June 2003



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NEWS IN BRIEF

Secretary General Addresses ASEAN Energy Officials



Secretary General Ria Kemper was invited to address the 21st Meeting of Senior Energy Officials of the Association of South-East Asian Nations (ASEAN) in Langkawi, Malaysia, on 30 June on the subject of the Energy Charter process and its potential relevance for energy cooperation in the south-east Asian region.

In particular, Dr Kemper focused in her presentation on the role that the Energy Charter's rules on energy transit could play in relation to the implementation of existing projects for increased trade in natural gas and electricity among ASEAN's ten member countries (*Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Cambodia, Vietnam, Laos and Myanmar*). The interest of the Energy Charter constituency in developing more regular exchanges of information with the ASEAN region was also underlined, in which connection Dr Kemper invited ASEAN as an institution to consider the possibility of applying for observer status at the Energy Charter Conference.

New Investment Climate Reports Issued



At its last meeting on 26 June, the Energy Charter Conference adopted recommendations on the latest two Country Reports on investment climate and market structure issues to be prepared by

the Charter's Investment Group, namely Georgia and Mongolia.

In both cases, the reports provide a detailed overview of the energy-sector policies of the respective governments, plans for introducing competition, including privatization in the energy sector, and the legislative framework governing investments by foreign nationals in the energy industries of these two states. With regard to Georgia, the Conference in its recommendations welcomed the progress made by the government on creating a favourable environment for energy investments overall, but noted the desirability of greater legislative transparency, in particular with regard to Georgia's fulfillment of its Energy Charter Treaty commitments.

Concerning Mongolia, the Charter Conference paid tribute to the efforts being made to move towards energy market restructuring, but underlined in

particular the need to take measures to reduce the high energy-intensity of the Mongolian economy.

The final texts of both reports can be viewed on the Energy Charter web-site (*see details at the foot of this page*), and hard copies can be ordered from the Secretariat.

Discussions with Korea on Cooperation with the Energy Charter

On 3-4 July Secretary General Ria Kemper visited Seoul for talks with the government and energy industries of the Republic of Korea, which became an observer state to the Energy Charter in December 2002. During her visit, Dr Kemper met with Director-General in the Korean Ministry of Commerce, Industry and Energy Ki-Ho Kim, Director-General in the Korean Foreign Ministry Rae-Kwon Chung, and Acting President of the Korean Gas Corporation (KOGAS) Jong-Sool Kim.



Prospects for closer cooperation between the Charter and Korea were discussed, including the eventual possibility of full accession by the Republic of Korea to the Energy Charter Treaty, and views were exchanged on prospects for increased cooperation in North-East Asia over natural gas supplies. Dr Kemper informed her hosts in particular about the ongoing development of the Secretariat's relations with other non-member countries in the Asia-Pacific region.

TOTAL addresses Investment Group



On 28th May the Energy Charter's Investment Group heard a presentation by Mr Menno Grouvel, Senior Vice President for Continental Europe and Central Asia in the Exploration and Production Division of the Total Group. In his presentation, Mr Grouvel updated the Investment Group on Total's oil and gas investment activities in Azerbaijan, Kazakhstan, and Russia.

The presentation took place in the context of the Investment Group's ongoing efforts strengthen its dialogue with important actors in the energy sector, in order to work jointly towards improving the investment climate in member countries. Previous presentations to the Group have been made in this context by RAO EES Rossii, Ruhrgas, BP, the EBRD, and the French Petroleum Institute.