

Dr Urban Rusnák: Mission statement for the International Energy Charter in 2022-2026

1. Background

The Energy Charter Process came into being in 1991 at the end of the Cold War following a political declaration: the European Energy Charter. It was a period of new hope and high expectations for East-West cooperation. The legally binding Energy Charter Treaty (ECT, 1994, entered into force in 1998) set the rules for energy cooperation in investments, transit and trade, as well as a specific dispute resolution mechanism for the different types of disputes among its Contracting Parties and between them and investors. ECT is fuel neutral. The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA, 1994), which provides additional policy principles on energy efficiency and international energy cooperation in environmental issues. The ECT Trade Amendments entered into force in 2011. Since 2009 general discussions about the modernisation of the Energy Charter Process started. The political declaration of the 2015 International Energy Charter marked the first phase of the modernisation. The Energy Charter declarations and the Treaty stand today for 'common rules for energy security'. The International Energy Charter occupies a unique, legally binding niche, among energy organisations. Its membership is historically concentrated mostly in northern Eurasia, but gradually expanding worldwide. Since 2014 the ECT, as the most frequently invoked international investment agreement, continues to play a balancing role between 'legitimate rights of governments to regulate' and 'legitimate expectations of foreign investors. The second phase of the modernisation was focusing on improvement of the internal procedures. The Review of the Energy Charter functions under article 34 (7) in 2019 (the Review) in fact concluded that those efforts on improvement of internal procedures should continue deeper and broader.

In recent years important external changes in international relations and applicable legal arrangements, along with growing importance of the climate emergency, geopolitical shifts and technological innovations in the energy sector, led to re-examining the ECT relevance. Therefore since 2017 Contracting Parties engaged in the discussion and scoping of future ECT modernisation and in 2019 started negotiations on the modernisation of the Treaty. At the same time, the International Energy Charter become increasingly scrutinised by external stakeholders for alleged obstacles on the ongoing energy transition. Those critics are ignoring existing evidence that the majority of investors using the Treaty for protection of their investments are in renewable industries. ECT provides a unique level playing field for a predictable treatment of investors in times of the unprecedented legitimate changes of public policies.

The implementation of the Paris Agreement will require investments in energy transition not only far beyond current efforts, but exceptional in the worldwide scale. The global nature of the problem means that countries cannot just focus on their energy sectors, they must also find a framework that is acceptable to all parties and can quickly regulate and incentivise investments in the energy transition. If the ECT framework did not exist, it would have to be created to address the challenge of the energy transition holistically.

2. Role of the Secretary-General

While the ECT refer to the Secretary-General and its functions in Art. 35 in a very laconic way, the role of the Secretary-General has three main dimensions. The Secretary-General leads the Secretariat and this *internal* dimension is defined by the internal rules and regulations. In the *institutional* dimension Secretary-General leads efforts of the Secretariat in supporting the Conference in all its functions and interacts with member states, subsidiary bodies and the Conference officials. In its *external* dimension Secretary-General represents the International Energy Charter in relations to other international bodies, observers and relevant external stakeholders.

The Secretary-General plays an integrating role within the Energy Charter Process, he/she is connecting representatives of the Members and Observers, Conference officials, Secretariat's Staff, IAP Members and external stakeholders revolving around the Energy Charter Treaty and the International/European Energy Charter declarations into one ecosystem.

3. Main tasks

The Energy Charter Process should be finetuned to strengthen the energy security of its members while providing efficient support in the energy transition with respect to other commitments, in particular, the Paris Agreement and UN SDGs. Following the Conclusions of the Review 2019 and subsequent discussion with delegates, following main tasks and deliverables of priorities until the next Review scheduled for 2024 could be identified as below. For the period 2025-26, main tasks and deliverables should reflect priorities agreed during the Review 2024:

Energy Charter Secretariat (ECS)

Maintain the operability of the ECS after the amendment of internal and procedural rules in all core areas of the ECT, with particular focus on investment, energy efficiency, transit and dispute resolution. In case any leftovers from the Review Conclusions and the International Public Audit recommendations remain non implemented by the end of 2021, their implementation will be the highest priority.

In case a new structure of the Secretariat will be approved, the Secretariat and its staff would need to adapt itself to the new structure, rules, reporting requirements and governance standards. The process should be done in close cooperation with the Staff Committee to minimise risks of future disputes. After 1-2 years and a reflection on experiences under new conditions a need for subsequent finetuning of procedures may arise. Introduction of the IPSAS standart for accounting and auditing would remain the main deliverable by 2022.

The Secretariat will continue to increase the use of new technologies to increase efficiency. As far as lessons learned up-to-date from the COVID19 pandemic period, the Secretariat will propose more cost-effective meetings of Subsidiary bodies alternating and combining virtual and physical meeting to achieve lower operational costs for meetings.

ECS would focus on the increase of professional awareness about the International Energy Charter within the broad constituency and in relation with other international and regional organisations.

Modernisation of the Energy Charter Treaty

The successful continuation of the modernisation negotiations with tangible results is a precondition to the survival of the organisation in the short term. Due to the complexity of the negotiations with the divergent interest of certain groups of Contracting Parties, it would be reasonable to expect the conclusion of the negotiations in 2022. The ratification process should follow in all Contracting Parties. It would be desirable to agree on a provisional application of the amended Treaty as the day of its signature (for those countries, who allow it).

The successful conclusion of negotiations is a precondition to the continuation of the Energy Charter Process and the Secretariat until 2026. Failure to modernise the ECT could lead to the withdrawal of several Contracting Parties from the ECT and the fast implosion of the process. Due to the sunset-close countries withdrawing from the ECT (1994) would be bound by its investment protection provisions for 20 years.

Investment

The lack of interest of Contracting Parties in recent years shows that Investment Climate and Market Structure Reports with an in-depth and comprehensive assessment of countries investment conditions in the energy sector are not meeting their expectations anymore.

On the contrary, the Energy Investment Risk Assessment reports regularly attract active involvement of approximately 2/5 of Contracting Parties and Observers to the Energy Charter Conference. Their involvement apart from producing the #EIRA annual publication allows for building an unprecedented library of regulatory norms in energy and investment sectors. Furthermore, countries regularly participating in EIRA surveys could benchmark the evolution of their body of energy regulations against international practice and have an independent track record of the implemented reforms. The updated methodology will provide for even more in-depth assessment of the regulatory progress made in the achieving goals of the energy transition. The project methodology evolves in the direction of the *Energy (Transition) Investment Risk Assessment* which could serve along with the Modernised ECT as an important instrument to secure faster implementation of the UNFCCC Paris Agreement in participating countries.

Investment facilitation toolbox would be available for the countries in need of focused support in practical aspects of implementing reforms necessary for the successful energy transition.

Energy Efficiency

The prominence of the ambitious Energy Efficiency policies is growing due to the changes in the global agenda. The full use of the PEREEA instruments, development 1-2 In-depth Energy

Efficiency reports annually and assisting Contracting Parties and Countries in the accession in improving energy efficiency policies should be the top priority.

Practical analyses of economic and decarbonisation impact of energy efficiency policies implementation on different fuels use should be focused on countries with high energy density economies.

Transit

The Secretariat will focus its work regarding the transit of energy resources on issues in landlocked regions of Asia and Africa. The Secretariat may resume the work on the next generation of the model transit agreements if requested by Contracting Parties.

In case of successful modernisation and adding new energy sources to the Annex EM I, the Secretariat will develop an in-depth study of potential issues related to transit of those resources.

Dispute resolution

The Conflict resolution center would continue to provide neutral, independent legal advice and assistance in dispute resolution. Dispute prevention and mediation should play a more prominent role in the work of the Secretariat.

Expansion & Outreach (Enlargement)

Following the latest revision of the CONEXO policy and the prioritisation by members (expected to be completed by 2021) the Secretariat should resume ECT enlargement efforts in line with results agreed.

In case of successful modernisation, it would be desirable, that the Conference reaches out to countries already invited to accede such as Pakistan, Mauritania, Eswatini, Burundi or to countries which have requested an invitation to accede (Uganda). The follow up with those countries for accession to the modernised ECT should be a priority.

As soon as the pause on accession is lifted, the Secretariat should re-engage with countries in the accession. It could complete 1-2 accession reports per year for countries that have already commenced accession, drafted an accession report or have notified the Secretariat of their intention to accede to the ECT.

The result of the ECT Modernisation will determine any potential future action regarding four original Signatories of the ECT. Until the conclusion of the Modernisation, the efforts to convince Signatories to ratify the ECT(1994) - the Consolidation - should be paused.

4. Vision: the International Energy Charter 2026

In 2026 the International Energy Charter based on a modernised ECT will remain a niche organisation, standing for 'protecting the sustainable energy investment for global low-carbon

transition'. The modernised Energy Charter Treaty will become a global "golden standard" for energy investment and transit rules reflecting ongoing energy transition. It should remain a strong instrument to support new investments necessary to address the climate emergency in line with the universal commitments of the SDG 7 and the Paris Agreement. It will serve as an indispensable tool for protecting private investment necessary for successful gradual global low and zero-carbon transition, facilitating regional cooperation and strengthening energy efficiency of its Members and Observers. This will be only possible with mobilising the political support of its core members, including the EU, improving operational conditions of the Secretariat by providing adequate financial resources for its further activities.

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