Energy Charter Conference

Thomas W. Wälde and Andrei Konoplyanik

I. Introduction

The Energy Charter Conference, an intergovernmental organization, is the governing and decision-making body for the Energy Charter process, and was established by the 1994 Energy Charter Treaty (ECT). The Conference has political responsibility for implementation of the Energy Charter process, the ECT, and related instruments. It also decides on possible amendments to the ECT and on the admission of new members. All states who have signed or acceded to the ECT are members of the Conference, which meets on a regular basis for three primary purposes: to discuss policy issues affecting energy cooperation among ECT signatories; to review implementation of the provisions of the ECT and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA); and to consider possible new instruments and projects on energy issues. Meetings of the Conference are normally held in Brussels (twice a year prior to 2005; once a year since then – usually in November or December).

II. Origins and Development

In the early 1990s, the end of the Cold War offered an unprecedented opportunity to overcome the previous economic divisions on the European continent. Nowhere were the prospects for mutually beneficial cooperation between East and West clearer than in the energy sector. Russia and many of its neighbour-states of the Former Soviet Union (FSU) were rich in energy resources but needed major investments to ensure their development, whilst the states of Western Europe had a strategic interest in diversifying their sources of energy to diminish their dependence on the Middle East. There was therefore a recognized need to ensure that a commonly accepted foundation was established for developing energy cooperation among the states of the Eurasian continent. On the basis of these considerations, the Energy Charter process was born.
Dutch Prime Minister Ruud Lubbers initiated the process by suggesting in June 1990 a mechanism to help the former Socialist countries in their transition to market economies. Since it was started by the EU, the overall strategy was formulated so as to combine ‘Western’ European concerns (security of energy supplies) with ‘Eastern’ assets (abundant oil and gas reserves) by facilitating Western (primarily European) investment in the East and transit of Eastern energy to Europe. This would help the EU in several ways: greater diversification of energy flows to the EU, new opportunities for oil and gas investment in the East for EU investors, but also Eastern economic development with the hoped-for consequence of making the easterly expansion of the EU safer by having more prosperous and more settled Eastern neighbours. That was expected to further increase interdependence between East and West in terms of energy and investment flows, which in turn would help to diminish (if not totally exclude) the residuals of mental and political confrontation within the European continent, which still existed as the consequences of Cold War period and which could not disappear right away. That, in turn, was aimed at improving the competitive position of the EU in its global competition with US.

The Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects were signed in December 1994 and entered into force on 16 April 1998. By the end of 2008, the ECT had been signed or acceded to by 55 states (as well as by the European Communities and Euratom, the total number of its Signatories is therefore 56), 49 of which (plus the EU) have already ratified the Treaty.

The ECT was developed on the basis of the European Energy Charter of 1991. Whereas the latter document was drawn up as a declaration of political intent to promote East-West energy cooperation, the ECT is a legally-binding multilateral instrument, the only one of its kind dealing specifically with intergovernmental cooperation in the energy sector.

Moreover, the ECT is currently the only major multilateral treaty in the energy field and – in terms of investment protection – the multilateral treaty with the largest geographical and country coverage. It is emerging as a significant international legal instrument providing protection of investment and facilitation of trade and transit across a widening community of energy producing and consuming countries. It also constitutes a benchmark for guiding and measuring internal reforms of the energy industries in its member states and for opening up cross-border investment and trade. In addition to the instruments of the European Union, the WTO agreements, the North-American Free Trade Agreement (NAFTA), and the network of more than 2,400 bilateral investment treaties (BITs), it is the only very significant international investment, trade, and transit instrument for the energy