

LE PARTENARIAT UNION EUROPEENNE – RUSSIE par le DR Ria KEMPER

"THE ROLE OF THE ENERGY CHARTER SECRETARIAT"

In my presentation, I should like to concentrate on two subjects:

· **firstly, to briefly update the audience on the main priorities** currently on the agenda of the Energy Charter, and to outline the prospects for progress in relation to them;

· **secondly, to attempt to explain why the**

Charter is relevant for the broader energy policy agenda being pursued by the European Union, and in particular for the EU-Russia partnership, which is the subject of our meeting today.



To begin with, I think that there is no necessity to go into a long introduction about the origins and aims of the Energy Charter process, since I believe that most people here will already be fairly familiar with our organization and what it does.

Nonetheless, as a starting-point for our discussion, let me briefly recall the main points. The Energy Charter process was set up in the early 1990s as a multilateral body designed to provide a new framework for international energy cooperation in the post-Cold War era, based on a common commitment to develop open and competitive energy markets.

This commitment was subsequently enshrined in legally-binding form in the 1994 Energy Charter Treaty, which provides the legal foundation for our organisation's work, and which has been signed by 51 European and Asian states, as well as by the European Communities collectively. The ECT is the only multilateral agreement of its kind in existence specifically devoted to energy cooperation issues. Its provisions ensure the protection of foreign investments in the energy sectors of its signatory states, provide rules concerning energy transit – which I will return to in a little while – and concerning trade in energy materials and products.

The two key priorities on the Energy Charter's agenda at present are:

completion of the ratification of the Energy Charter Treaty by the Russian Federation,

completion of negotiations on an Energy Charter Transit Protocol, a separate legal instrument designed to enhance and strengthen the Treaty's existing rules on cross-border transit. Although in strictly legal terms these are two separate subjects, there is a strong political linkage between their resolution.

Russian ratification.

As most of you will be aware, Russia was one of the Energy Charter Treaty's original signatories in 1994, but has so far not completed its ratification. As a result, the Treaty still does not enjoy full and irrevocable legal force in Russia, despite the Russian government's stated commitment to applying the Treaty on a provisional basis pending its ratification. **The main reason to date for Russia's non-ratification of the Energy Charter Treaty is the strong opposition of the Russian gas monopoly Gazprom.** Although the Russian government has consistently voiced its support for ratification of the Treaty, the influence of Gazprom over the debate has been such that no decision to proceed with ratification was possible when the Russian State Duma last held hearings on the Treaty in January 2001. Let me underline at this point that the stated reasons for Gazprom's opposition to the Treaty are in our view legally unfounded, as I have

constantly emphasized in my direct talks with Gazprom's leadership. I am happy to go into the details of these arguments at a later stage, if this is of interest.

The present position is that Russia has made a strong political linkage between its eventual ratification of the ECT and the completion of negotiations on a separate legal document currently being developed under the Energy Charter's auspices, the Energy Charter Transit Protocol. This document is designed to establish an enhanced set of multilateral rules, under international law, on key aspects of the transportation of energy resources – both hydrocarbons and electricity – across national boundaries. After nearly four years of often very difficult negotiations among our member states, the Transit Protocol is now close to adoption, which we hope will take place next month.

In fact, negotiations on its text at a multilateral level have in practice already been completed, with only three outstanding issues left to be resolved before all our member-countries can move towards adoption. These three issues relate exclusively to differences in position between the European Union and Russia, and bilateral consultations between these two parties are continuing with the aim of finding solutions to them. Again, I am happy to go into the details of these open issues later on. Suffice to say at this point that, in my view, solutions to all of these open issues have in principle already been reached - ad referendum - at the working level of the negotiators. It is now primarily a question of finding sufficient political will in the respective capitals to proceed with finalization of the Transit Protocol on this basis. Together with Henning Christophersen, the Energy Charter Conference Chairman, I plan to visit Moscow next week in order to discuss the final position of the Russian government with regard to the Transit Protocol's completion.

This provides, in a nutshell, an overview of the two main priorities on the Energy Charter's agenda at present. What I would now like to focus on is the question of why these issues are important in policy terms.

What does Russian ratification of the Energy Charter Treaty mean in practice? And how will the Transit Protocol benefit its member countries, once it is adopted and signed? Are these matters only of academic interest to a narrow group of international lawyers and administrators? Or do they have a genuine significance for the "real world" of energy business and politics?

Russian ratification of the Energy Charter Treaty is not an end in itself.

Rather, it represents a step towards securing the right long-term climate for much-needed investments in the Russian energy sector and for stable flows of energy from Russia and its neighbours to EU markets – which in future will, as we all know, become increasingly reliant on energy imports, especially of natural gas. I do not claim that this step will of itself resolve all the problems facing the EU, Russia and other countries in the Eurasian space concerning energy cooperation.

The Energy Charter Treaty is a not a financing mechanism, and nobody pretends that its ratification would in itself lead to an overnight influx of capital into the Russian energy sector. But what it would do is to cement, in a legally binding form, Russia's commitment to the principles of open, competitive energy markets, and a non-discriminatory approach towards foreign energy companies, as the basis for its energy cooperation with the outside world.

And this irreversible commitment is, I submit, essential if such cooperation is to be sustainable in the long term. After all, we should not forget that it is not governments, but private industry, that will mobilize the investments needed to realize Russia's enormous potential in the energy sector. The task of governments is to set the right legal framework within which such investments can be made with the minimum level of risks. In this context, the Energy Charter Treaty remains as important, in my view, as when it was originally concluded – amid much political fanfare at that time, as some of you may recall.

Ratification by Russia would be good news for the EU and its energy companies, in terms of creating a more stable and transparent legal framework for those investors looking to do business on the Russian energy market. It would also be good news for Russia's neighbours in the CIS region, who would be able to rely on the framework of binding rules offered by the Treaty as the legal basis for their energy trade with Russia.

But, equally importantly – as I have consistently underlined in my public statements – **ratification of the ECT would, I firmly believe, be good news for Russia itself.** It would represent a concrete step towards Russia's full integration into the international trading system, given that the ECT's rules are based on exactly the same principles as those of the WTO. Indeed, I would even say that ratification of the ECT represents in many ways a litmus test of Russia's readiness to join the WTO, which, as we know, is one of the stated priority goals of President Putin's administration.

The ECT provides Russia with a legal tool that it can use not only to attract foreign investments, but also to defend its own legitimate interests in its energy relations with foreign countries.

Concerning the Transit Protocol, I also believe it is clear that what the Energy Charter is trying to achieve is not academic in nature, but of direct relevance to the "real world". By all forecasts, the next two decades will see a major expansion in global demand for energy resources. And one of the consequences of this is that hydrocarbons and electricity will increasingly have to be transported from their places of production to consumer markets over long distances, and across many national borders. Energy transit therefore is, and will remain, a key strategic issue for future global energy security. And it is in the common interest of producers, consumers and transit countries to ensure that the risks associated with energy transit are reduced to a minimum. That is why international rules on energy transit will only grow in importance in the future.

In this respect, the Energy Charter Transit Protocol offers a unique international instrument, and it is therefore all the more desirable that the Protocol's adoption is successfully completed as soon as possible. As an aside, I should note that it is not only here in Europe that the strategic importance of this issue is recognized. There are a number of major countries outside our present constituency – most notably China and Iran – that are now showing serious interest in the possibility of joining the Energy Charter, precisely, I believe, due to their understanding of the benefits that adherence to its multilateral transit rules in particular can offer, in terms of promoting investor confidence. Being here in Nice, I feel it also important to draw attention to the relevance of the Charter's legal framework as a basis for energy cooperation in the Mediterranean region. The potential role of the Energy Charter Treaty in this area was specifically underlined in the 1995 Barcelona Declaration, which launched the EU's policy dialogue with its Mediterranean partner states. Tunisia, Morocco and Algeria are all observers to the Energy Charter, and we very much hope that in time they will move towards full accession to the Treaty.

Before concluding, Mr Chairman, let me finally say a few words about the relationship between the Energy Charter process and the EU's external energy policy.

The EU holds a particular place in the work of our organization - the very creation of the Energy Charter process was, after all, an EU initiative back in the early 1990s. The EU is also the only regional organisation that is a collective Contracting Party to the Energy Charter Treaty.

As we have just heard in the presentation of Mr Cleutinx, the EU-Russia energy dialogue, which has been making good progress since its launch in 2000, is addressing many of the same objectives that are part of the focus of the Energy Charter process – in particular, in terms of creating a positive investment climate

for EU companies in the Russian energy sector, and promoting a more competitive energy market within Russia. Let me say straight away that I see no contradiction between the development of this bilateral dialogue and the multilateral work being conducted within the Energy Charter process, of which both Russia and the EU are part. On the contrary, both processes complement each other.

The EU-Russia dialogue should help to give a major new impetus to the overall goals of the Energy Charter process, and in particular to provide high-level political support for our ultimate goal of achieving Russian ratification of the Energy Charter Treaty.

In short, I see it as a very positive development that the EU is now pursuing both bilateral and multilateral approaches to energy cooperation with Russia, but on the basis of the same overall principles. I am also pleased to note that I am not alone in this view. Mr Cleutinx has already drawn attention to the same point in his presentation, in which he underlined the complementary nature of the EU-Russia energy dialogue and the Energy Charter process. This has also been emphasized in recent years on more than one occasion by the EU's Council of Energy Ministers, which has confirmed that the EU's bilateral energy dialogue with Russia should be developed in parallel with the Energy Charter process.

The final point I wanted to make is this: just like any other multilateral organization, **the Energy Charter process can only be as strong and as relevant as its member states collectively want it be**. Within the Secretariat, we are increasingly attempting to broaden the work of the Energy Charter, so that it operates as a genuine policy forum for international energy cooperation issues, involving both governments and, more and more, the business community.

As Europe moves towards a future of growing reliance on energy imports, the need for such multilateral mechanisms, in which common policy approaches to mutual challenges can be discussed and developed, will in my view increase still further.

Together with the IEA and the International Energy Forum, whose activities complement our own, the Energy Charter offers a valuable instrument that governments have at their disposal for energy cooperation in wider Eurasian space and beyond. As I have mentioned, we hope in future to expand the coverage of our organization to encompass such important players on the global energy scene as China, South Korea, Iran, and hopefully also countries of the southern Mediterranean region.

I hope, therefore, that all our member-states, and in particular EU policy-makers, will continue to maximize the potential use of the Charter as a tool for cooperation. This would be fully in line with a commitment to multilateralism, as the basis for stable international relations, which should, I believe, form one of the long-term foundations for energy cooperation in a world of increasing globalisation.

Thank you for your attention, and I look forward to answering your questions.

Courtesy of the "Institut Européen des Hautes Etudes Internationales"

www.geopolitis.net