



## THE NEED FOR STRONGER PROVISIONS ON SUSTAINABLE DEVELOPMENT

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The pioneering European Energy Charter of 1991 provides the political foundation for the entire Energy Charter Process. It has very ambitious and visionary objectives which, among others, includes minimising negative environmental impacts of the energy mix, technology and know-how exchange in the energy and environment fields and use of new and renewable energies and clean technologies. These objectives have now been incorporated in the *International Energy Charter* in 2015.

While the *International Energy Charter*, a declaration of political intention aiming at strengthening energy cooperation between the signatory states, which has now been endorsed by over 90 states and international organisations, is not the obvious instrument for climate change mitigation, it reflects some of the most topical energy challenges of the 21st century, including the development and liberalisation of international trade in energy, the development of efficient energy markets, the promotion and protection of energy investments, access to and development of energy sources, nuclear safety, energy efficiency and environmental protection.

By including all these relevant issues, the *International Energy Charter* promotes mutually beneficial energy cooperation among nations for the sake of energy security and sustainability, and thus fits well into the current global policy agenda. Under the umbrella of this framework, as many new energy producing, transit and consuming countries as possible are welcome to engage in a level playing dialogue with a prospect of joining the legally binding *Energy Charter Treaty* (ECT), which stands as the only multilateral energy investment treaty in the world.

### The necessary investment framework for innovative energy solutions

An enabling environment for sustainable energy investments is a prerequisite for accelerating the global energy transition. Now it is time to step up efforts to unlock the potential for the right investments, which includes local and community-driven financing available from the private sector to generate, distribute and sell decentralised renewable energy, especially in remote areas. The governments have a duty to act as facilitators of energy access, and introduce frameworks that fit different energy solutions, cost-reflective returns, and dedicated incentives. This could only be achieved with an inclusive planning and monitoring processes, as well as accessible quality data

and adequate legal and financial structures. The international community need instruments that refine the needed investment and enable multi-stakeholder participatory planning and monitoring of barriers to sustainable and low-carbon energy investments.

This is why the *Energy Charter Energy Investment Risk Assessment (EIRA)* was developed. The 2019 edition of the EIRA report with over 30 participating countries is expected to be launched in September this year. It is a tool which helps governments and investors assess risks in the policy, legal and regulatory environment related to investment in energy. As mentioned above, the global energy transition does not only pose challenges but there are also tremendous opportunities of investment in energy efficiency, in renewables, in batteries or clean tech in general. Therefore, EIRA collates and publishes in an accessible manner, the hard figures, analysis, and predictions for each market which are needed by the investor community.

EIRA advises countries on how they can improve their investment climate and benchmarks their performance against international best practices. It highlights the key strengths and the areas for improvement, gives recommendations to improve governance and assists in designing risk mitigation plans.

All the EIRA countries have policy frameworks in place for sustainable energy. In most, short- and medium-term targets have been set for key priorities such as reducing emissions, integrating a larger share of renewable sources in the energy mix and for promoting energy efficient technologies. Despite these efforts, the link between sustainable energy targets and long-term resource planning is relatively weak and will need to be strengthened. The absence of seamless policies and targets may create barriers to the energy transition.

It is therefore important to reiterate here that a move from fossil energy sources towards low-carbon renewables is one of the best means to reduce carbon emissions and facilitate much-needed sustainable growth to help tackle continued global poverty. By promoting the facilitation of trade in environmental goods, and by extending the ECT trade regime to energy equipment, the Energy Charter Treaty promotes the export and transfer of technology from developed countries to emerging economies in need of such technology.

However, while renewable sources such as energy from wind or sun is free of charge, their exploitation is still expensive and requires complex technology expertise and significant investments. The ECT does have investment promotion and



*Solar photovoltaic energy technology will be the largest contributor to decentralised off-grid and mini-grid systems by 2040*

dispute settlement provisions to help in this area.

#### **The need for a modernised Energy Charter Treaty and expansion of its geographical scope**

The ECT is a multilateral trade and investment agreement applicable to the energy sector. It was signed in December 1994 and entered into force in April 1998. To date the ECT has 56 Contracting Parties including the EU and EURATOM.

For almost three decades the *Energy Charter* has served as a proactive and pragmatic facilitator of cross-border energy cooperation across Europe and the globe. However, the energy system, economic and geo-political situation and most importantly the ecology is vastly different today than in the 1990s. While the ECT has the great potential to further contribute to promoting sustainable energy at global level and to strengthen global energy security by extending the application of its legal framework to an increasing number of the countries, and that it serves as a very unique investment instrument which sets standards and assures the highest levels of investment protection in

the energy sector, the ECT provisions have hardly been revised since its establishment in the 1990s.

There is a growing and common acknowledgement not only by its contracting parties but among the international community that the ECT needs to provide stronger provisions on sustainable development, including on climate change and the clean energy transition, in line with the Paris Agreement. According to an important number of its Contracting Parties, in the area of investment protection the ECT rules do not correspond to modern standards as these standards have been revisited recently. Therefore in its meeting in Ashgabat in 2017, the *Energy Charter Conference* opened discussions on potential ECT modernisation. The list of topics for modernisation covers *inter alia* investment protection provisions and related definitions, but also pre-investment commitments, transit, the economic integration agreements clause and some provisions related to dispute resolution. The start of the negotiations to modernise the ECT will ultimately be decided by the *Energy Charter Conference*. It is expected that this will be still in 2019. ■