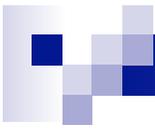




# The modernization of the Energy Charter Process and its relevance for gas market regulation

**Geneva, 18 January 2011**

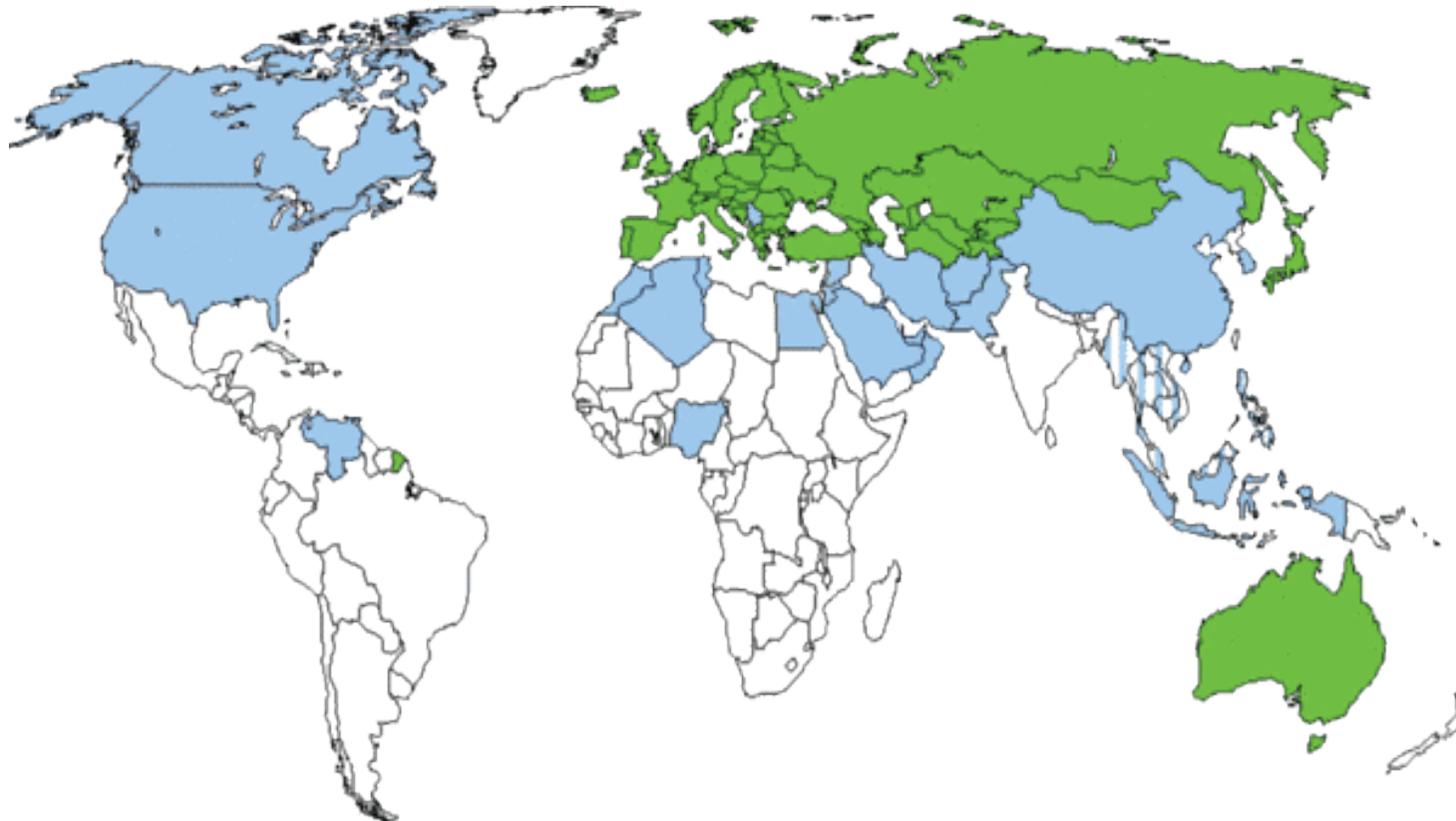
**Florian Encke**  
Senior Expert  
Energy Charter Secretariat



# The Energy Charter Treaty

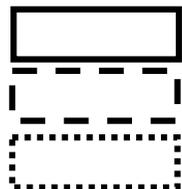
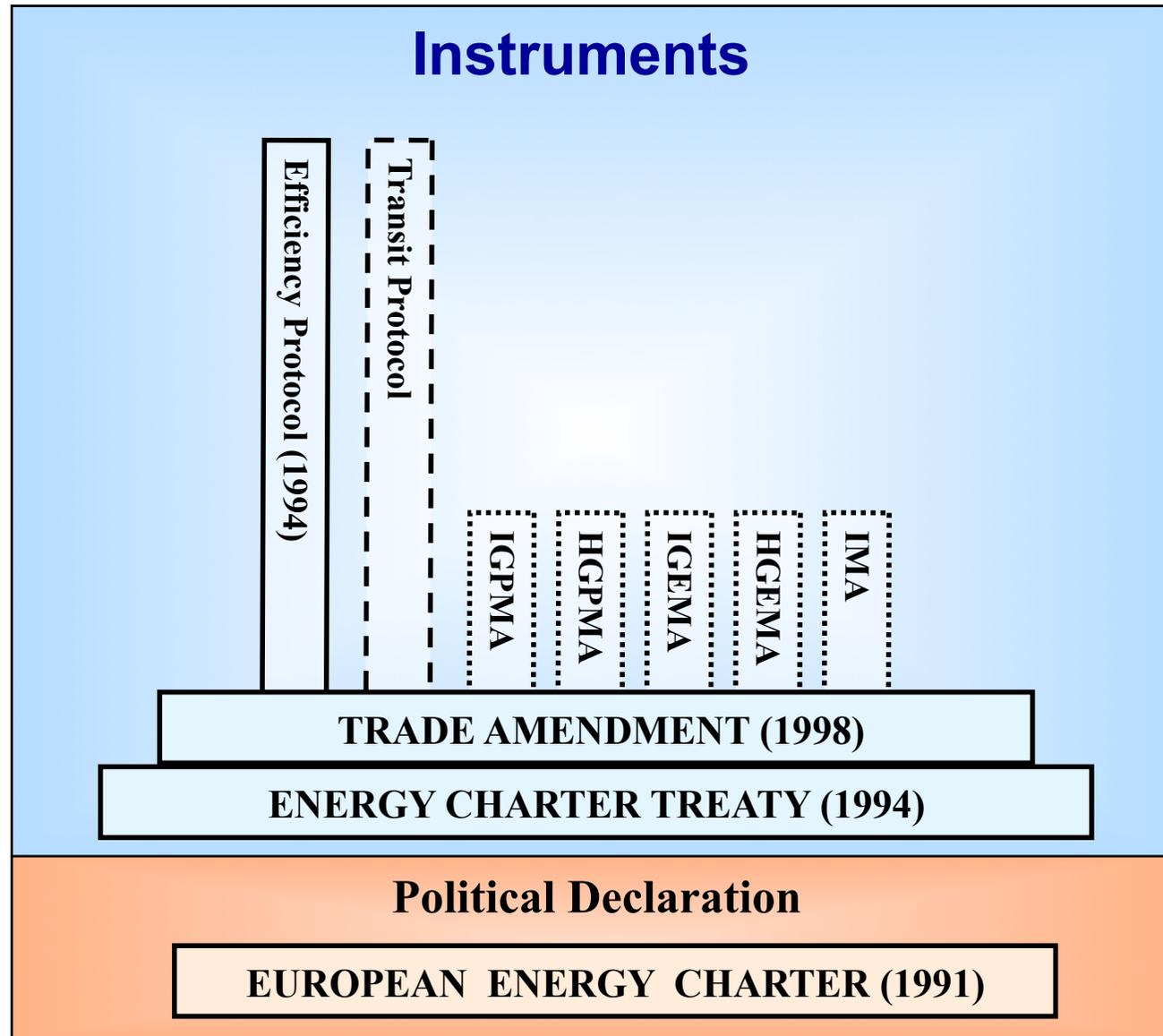
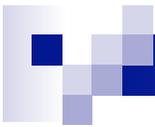
1994: Signature

1998: In Force

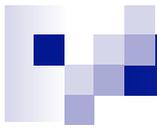


■ signatory

■ observer



- adopted and in force
- ongoing negotiations
- model agreements (MA)



# Energy Charter Treaty

## The Energy Charter Treaty

“establishes a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter”. (Purpose of the Treaty, Art. 2 ECT)



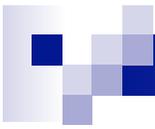
# Binding provisions of the Energy Charter Treaty (I)

- **Trade rules** applying by reference WTO rules to all energy trade, also between CPs that are not WTO members;
- **Freedom of Transit**, national provisions to treat transit no less favourable than import or export, no obstacles to the creation of new capacity in energy transport facilities, securing established flows
- **Investment promotion and protection:** Binding MFN/NT obligation for post-establishment phase, protection against expropriation, nationalization and breach of individual investment contracts



# Binding provisions of the Energy Charter Treaty (II)

- **Competition**
- **Transfer of technology**
- **Access to capital**
- **Sovereignty over energy resources**
- **Environmental aspects**
- **Transparency**
- **Taxation**
  
- **Dispute settlement:**
  - Ad hoc arbitral tribunal for State to State disputes concerning the application or interpretation of the ECT
  - International arbitration for disputes between a contracting party and an investor of another contracting party



# Policy forum

- **Role of the Charter as a Policy Forum; Charter Conference, Secretariat**
  - Implementation
  - Analysis (including on energy pricing, transit tariffs)
  - Peer review
  - Exchange of experience, policy dialogue



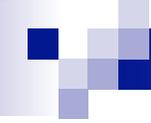
# Development of the Charter's rules base

- **Ambitious list of envisaged specific agreements in the Energy Charter of 1991**
- **Development of the Charter's rules:**
  - Protocol on Energy Efficiency and Related Environmental Aspects (1998)
  - Supplementary Investment Treaty (suspended)
  - Transit Protocol (ongoing)

# Modernization of the Energy Charter Process

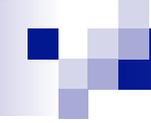


- **Ad Hoc Strategy Group** established by the Conference in 2007 to deal with new challenges and possible responses by the Charter
  - Climate change
  - Energy security
  - Investment and financing
  - Cross-border trade and transit
  - Energy efficiency
- **Review under Art. 34(7) ECT in 2009:**
  - commitment to the Treaty and acknowledgement of its achievements; recognition of the need to modernize the Charter Process
- **Modernization** envisaged by Rome Statement of 9 Dec 2009
- Establishment of the **Strategy Group** as a Standing Group



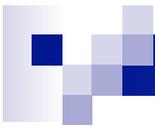
## Discussion on the modernization of the Energy Charter Process

- Basis for discussion on modernization in 2010: **Rome Statement** of 9 Dec 2009, the **G8-declaration** on energy security of 2006, **“Conceptual Approach”** and other strategic documents
- Aim to identify means how the Energy Charter Process could most effectively contribute to addressing global energy challenges
- ECT needs to have effective means of implementation in its core areas of competence



# Road Map for the Modernization of the Energy Charter Process

- Areas for action in the medium term (2014):
  - Elaboration of an integrated Policy on Expansion, Outreach and Consolidation
  - Expeditious conclusion of the negotiations on the draft Transit Protocol
  - Emergency response
  - Strengthening the effectiveness of the ECT's investment provisions
  - Strengthening international co-operation on energy efficiency
  - Policy forum, evolution of the Charter Process
  - Strengthening the effectiveness of the Charter's institutions



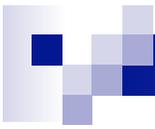
## Ongoing modernization

- Discussing impulses coming from members, observers or interested states under the Road Map for Modernization
- Openness to discuss the draft **“Convention on Ensuring International Energy Security”** prepared by the Russian Federation



# Projects relating to international aspects of energy regulation

- Draft Transit Protocol
- Charter's role in emergency situations



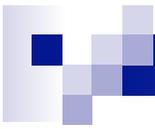
# Draft Transit Protocol

- Standards for energy market regulation:
  - Utilization of available capacity
  - Transit tariffs
  - Creation of new capacity Principles for the government take
  - Prohibition of unauthorized taking
  - Technical and accounting standards
  - Risk prevention and mitigation



# Emergency response as part of the Charter's modernization

- Making the conciliation procedure for transit disputes in Art. 7(7) ECT more effective
- Possible additional binding rules to accelerate state-to-state arbitration under Art. 27 ECT
- Possible contribution of the Energy Charter Conference in early warning, preventing and settling disputes



# Conclusion

- The Energy Charter Process
  - is dealing with significant international aspects relevant for gas market regulation
  - remains an important political instrument and valid as a legal framework
- New challenges to the energy sector are being recognized
- Modernization process is under way; may open new prospects to consolidate and to enhance co-operation with outreach to new partners