

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

on

EUROPEAN ENERGY CHARTER

on

A European Energy Charter

Introduction

1. In Dublin on 25 and 26 June 1990 the European Council asked the Commission to examine the Dutch Government's proposal to set up a European energy network.

The memorandum submitted in Dublin by the Dutch Prime Minister, Mr Lubbers, proposed establishing a European Energy Community to capitalize on the complementary relationship between the European Economic Community, the USSR and the countries of Central and Eastern Europe. In late August the Dutch administration followed this up by sending the Commission a note giving further details on some of the points raised in the original memorandum. At the end of the year a second version of this note, dated 17 December, was submitted.

2. Having taken into consideration different formal and informal communications from several Member States, President Delors, at the CSCE Summit in Paris on 21.11.90, developed the ideas of the Commission on the possible content of a European Energy Charter. In particular, he indicated that the central objective of energy policy is to ensure security of supply in conditions which allow the competitiveness of the economy and the well-being of our people to grow, at the same time creating a stable and advantageous situation for energy producers.
3. A European Energy Charter could create a climate of confidence propitious for optimum utilization and allocation of resources. It would contribute towards diversifying sources of supply and integrating the environmental dimension.
4. In Rome on 14 and 15 December 1990, the European Council concluded that long-term cooperation was needed in Europe and called for an international conference to be convened in 1991 to draft a European Energy Charter.

The Commission of the European Communities therefore supports the proposal to invite all countries concerned to a conference to draft such a Charter. The objective is to compile a detailed list of the principles and rules of the game which will be applied in their dealings with each other and with the rest of the world.

The Charter would provide a framework for discussing, and subsequently deciding on, specific forms of cooperation in Europe which would be covered by separate protocols on each issue.

5. The interest of such a Charter between the countries concerned lies in the complementary relationship in Europe between the owners of the resources, the holders of the advanced technologies and knowhow, and the consumer markets.

The Charter should clearly express this interdependence in the energy field in Europe and increase the awareness of the shared responsibility for the supply and environmental problems. From all these points of view, all European citizens would benefit from effective implementation of the Charter. The Charter could also provide an opportunity for a formal declaration of the new spirit of cooperation throughout Europe.

6. This objective finds itself fully integrated within the energy policy which the Commission wishes to promote and which consists of ensuring the security of supply in the Community with a view to completing the internal energy market and providing an external relations policy to back it up.

The European Energy Charter fits in fully with this strategy.

7. Such a Charter would provide the European Community with a new framework allowing an expansion of trade which, in turn, would add to the stability of its entire energy supply.

The countries of Central and Eastern Europe would obtain the assistance they need for economic recovery and for obtaining energy supplies under conditions allowing a cleaner environment, a better balance between different energy sources and more efficient use of energy.

Finally, for the Soviet Union, this expansion of its energy market and closer cooperation can be expected to raise the resources for modernization of the Soviet energy industry.

8. However, despite the obvious benefits of this approach to all involved, Europe must not isolate itself from the rest of the world. On the contrary, it must contribute towards a more dynamic world economy and favour development of the synergy between those countries having reciprocal interests in the energy domain in Europe.
9. Concerning as it does the activities of enterprises and interventions by public authorities in the energy sector, the Community confirms its commitment to a rigorous competition policy, taking into account the specifications of the different energy markets. The principles of this competition policy must be implemented in order to liberalise trade, extend consumer choice, increase the competitiveness of enterprises and ensure security of supply.

A. INSTITUTIONAL ASPECTS

10. By nature, the European Energy Charter should be a form of code of conduct which the signatories agree to observe and enforce.

The Charter will have to be implemented by a series of specific agreements or protocols imposing binding obligations on the signatories. In practice, these would have the force of international legal acts binding the parties in good and due form. These agreements would aim to adapt the principles defined in the Charter to the particular situation of each energy sector. Commercial contracts between enterprises would thus be concluded respecting the rules contained in these agreements.

B. CONTENT OF THE CHARTER

11. The Charter must set out a series of principles, objectives and methods to be applied by each country signing it.

(A) Principles

12. The recitals or introduction to the Charter should refer to the commitments given in the Paris Charter adopted at the CSCE Summit on 21 November 1990.
13. Subsequent recitals could refer more specifically to the need for developing cooperation and interdependence in the energy field as a more effective means of sharing responsibility for security of supply, the environment and optimum, and efficient use of resources.

In this respect, mention must also be made of the need to allow maximum use of market forces and of the shared desire to help them work.

(B) Objectives

14. After the recitals setting out the general principles, the body of the Charter must define the signatories' specific energy policy objectives.

To this end, it should first proclaim the signatories' will to ensure greater security of supply under satisfactory economic conditions and to promote the construction of a large European energy market taking due account of environmental protection requirements.

15. This spirit of cooperation should give birth to a series of common objectives, each logically following on from the other and falling under three headings:

- (i) expansion of trade in energy;
- (ii) cooperation and coordination in the energy field;
- (iii) optimum use of energy and environmental protection;

(C) Implementation

16. The body of the Charter must also specify the means which the signatories agree to employ in order to attain each of these objectives. Six should be noted at this juncture:

- (i) access to resources;
- (ii) conditions for exploitation of resources;
- (iii) rules on investments;
- (iv) free trade in energy;
- (v) cooperation on product standards and quality;
- (vi) research, development and innovation.

Access to resources

17. The top priorities for the declarations in the Charter on this subject must be:

- (i) non-discriminatory, transparent rules on the exploration, development and acquisition of resources (including the principles governing ownership or sharing of resources);
- (ii) introduction of mining rights applicable to all operators;

Exploitation of resources

18. The Charter should declare the principles of non-discrimination and transparency with regard to:

- (a) the law on ownership;
- (b) the rules on the operation of companies.

The countless laws, rules and administrative regulations on operation of the industry vary from one country to another. The principles set out above must be applied in particular to:

- (i) ownership of resources;
- (ii) operation of companies' management boards;
- (iii) rules on taxation;

Rules on investments

19. This is a key consideration for any industrial activity but it is all the more important for the energy industry, with its exceptionally heavy investments and long pay back times. The provisions on protection of investments could draw on the general principles laid down in the existing international law.

The right to repatriate profits and to obtain or use the convertible currency needed must be guaranteed.

Free trade

20. Freedom of trade cannot be divorced from the development and diversification of resources. The Charter must, therefore, also seek to boost trade in energy in Europe. Some of the issues this raises include:

- (i) the need to expand the main transmission grids;
- (ii) the will to promote interconnection of the grids;
- (iii) removal of the technical, legal, administrative or tariff barriers to trade;
- (iv) acceptance and enforcement of the right of transit;
- (v) promotion of international trade;

Technical specifications and safety rules

21. Free movement of energy products calls for a European-wide approximation of the quality standards and requirements imposed on the energy industry or mutual recognition of the rules on the subject. Amongst other things, this will entail:
- implementation of technical specifications, rules and conformity test systems which aim to ensure a high level of protection regarding health, the environment, and the interest of consumers and workers;
 - elaboration to this effect of a common agreement on such technical specifications and common rules or a movement to mutual recognition of their specifications and rules.

High standards must be maintained on safety and the protection of health, the environment, and consumers' and workers' interests.

Research, technological development and innovation

22. All the signatories should declare their will:
- (i) to promote exchanges of technology and participate in joint R&TD activities;
 - (ii) to cooperate on application of the new technologies emerging from the R&TD, for example, by taking part in pilot or demonstration projects;
 - (iii) to stimulate the application of technological innovations;
 - (iv) to guarantee the free movement and dissemination of new, energy-efficient technologies throughout Europe (subject to the international rules on industrial and commercial property);
 - (v) to conduct the requisite information and training campaigns.

C. SPECIFIC INTERNATIONAL AGREEMENTS

23. Protocols or specific Agreements implementing the Charter will be signed to lay a firmer foundation for attaining the objectives of the Charter and for setting up the instruments required. Each protocol will contain:
- (a) a description of the form of cooperation envisaged;
 - (b) details of the resources to be deployed (budget, regulations, staff, etc.);
 - (c) a list of the countries participating and of the specific commitments made by each of them to the measures planned;
 - (d) the duration of the measures and commitments.
24. Several specific areas in which cooperation would be of benefit to all involved can be pinpointed already. For example, the implementing agreements could cover:
- (i) nuclear energy and safety improvements in this field;
 - (ii) mining and clean coal technologies;
 - (iii) efficient use of energy (rational use and energy saving);
 - (iv) development of renewable energy sources;
 - (v) use of natural gas and transmission via high-pressure gas pipelines;

- (vi) modernization of power stations, interconnection of power grids and transmission of electricity via high-voltage power lines;
- (vii) use and transportation of oil and modernization of refineries;
- (viii) transfers of technology and encouragement of innovation.

D. MANAGEMENT OF THE CHARTER

25. Adequate arrangements will have to be made for checking that the principles laid down in the Charter and the specific international Agreements are implemented properly.

The European Community could suggest convening a Ministerial Conference once a year for this purpose and setting up an arbitration board to settle any disputes on interpretation or application of the international agreements adopted to implement the Charter.

An ad hoc secretariat reflecting the composition of the signatories will be charged with the effective implementation of the Charter and the specific Agreements. It could call on the services of other interested specialist organisations in the energy field.

As a transitional measure, and if necessary, the Commission of the European Communities could monitor and coordinate the action taken.

E. TIMETABLE

26. The Communication accompanied by the indicative draft of the Charter will be sent to the Council in February 1991.
27. The Community will convene an International Conference with a view to commencing negotiations with the third world countries concerned by the second half of 1991 at the latest.

This Conference could meet periodically with a view to finishing its work before the end of the year.

EUROPEAN ENERGY CHARTER

The representatives of the Governments of the States and the representatives of the European Community participating in the Conference, the President of the Council and the President of the Commission of the European Communities meeting in ... on ... ,

Having regard to the Paris Charter for "a new Europe" signed in Paris on 21 November 1990 following the Conference on Security and Cooperation in Europe;

Having regard to the report on the conclusions and recommendations of the CSCE meeting in Sofia on 3rd November 1989, on the protection of the environment,

Having regard to the document adopted in Bonn on 11th April 1991 by the CSCE conference on economic cooperation in Europe,

Anxious to give formal expression to this new desire for a European-wide cooperation based on mutual respect in order to create the conditions for reducing tension and imbalance within the international community,

Aware that there are problems of reconstruction and restructuring in the countries of Central and Eastern Europe has slowed down and that it is desirable for the European Community and all the countries concerned to participate in joint measures to bring about the economic progress which is essential if the reforms undertaken in these countries are to be successful,

Certain that making use of the complementary features of Europe where energy is concerned will benefit the world economy,

Persuaded that energy is essential for economic progress and more generally for social development and a better quality of life,

Convinced that there exists in Europe a common interest in problems of energy supply, safety of industrial plants, particularly nuclear plant, and environmental protection,

Concerned to do more to attain the objectives of security of supply, optimum management of resources and efficient use of resources,

Assured of support from the European Community in view of the increasingly important role it is playing in energy policy, particularly through completion of the internal energy market,

Resolved to promote a new model for energy cooperation in the long term in Europe within the framework of a market economy,

Eager to establish a climate of confidence so as to be able to capitalize on the existing complementary features and to establish closer, mutually beneficial commercial relations,

Convinced of the importance in this connection of improving energy infrastructure,

Aware of the consequent need to develop technological cooperation and to promote the free movement of energy products in order to increase trade throughout the continent of Europe,

Affirming that their energy policies are linked by interests common to all their countries and that they should be implemented in accordance with the principles set out below,

Affirming the essential importance of improving the production, transport and efficient use of energy with due regard for the environment in the perspective of a market covering the whole continent of Europe,

Affirming, finally, their desire to take the consequent action and apply the principles set out below.

HAVE ADOPTED THE FOLLOWING DECLARATION CONSTITUTING THE "EUROPEAN ENERGY CHARTER"

Title I: OBJECTIVES

With a view to improving security of supply on the most satisfactory economic basis and developing energy activities with due regard for the environment, the signatories agree to promote the construction of a large European energy market.

To this end, they consider it necessary to take action in the following fields:

1. Expansion of trade in energy, which will be achieved by means of:
 - a free market in energy;
 - free access to known and future energy resources and exploitation thereof on the basis of long-term profitability;
 - removal of technical or administrative barriers to trade and modernization, renewal and rationalization of the installations for the production, transfer and use of energy;
 - development of infrastructure.

2. Cooperation and coordination in the energy field, which will entail:
 - access to technical and economic data;
 - formulation of laws allowing all concerned to exploit the resources;
 - harmonization at a high level of the technical specifications and safety rules applicable to energy products and installations;
 - research, technological development and demonstration projects.

3. Optimum use of energy and environmental protection, which will imply:

- the development of new and renewable energy sources;
- greater energy savings;
- measures to combat pollution.

Title II: IMPLEMENTATION

In order to attain the objectives set out above the signatories agree to take joint action in the following fields:

- access to resources;
- exploitation of resources;
- rules on investment;
- free trade;
- technical specifications and rules on security and safety;
- research, technological development and innovation.

1. Access to resources

Considering that optimum development of natural resources is a sine qua non for attaining the objective of establishing a large European energy market, the signatories agree to facilitate access to resources by the interested operators.

To this end, they shall ensure that the rules on the exploration, development and acquisition of resources, including the rules on exclusive ownership or sharing of resources, are transparent and non-discriminatory.

They recognize the need to formulate such rules on mining rights wherever this has not yet been done. They agree to take all necessary measures to coordinate their action in this area.

2. Exploitation of resources

Aware of the need to be able to put the available resources on the entire market, the signatories agree on the need to remove all discrimination and barriers of any kind to the exploitation of such resources.

With a view to facilitating the development and diversification of resources, the signatories agree to avoid imposing discriminatory rules on operators, notably rules governing the ownership of resources, operation of companies' management boards, internal management of companies and taxation.

3. Rules on investments

Considering that protection of investments is fundamental for their development, the signatories guarantee the right to repatriate profits and to obtain or use the convertible currency needed.

They shall ensure that the existing international rules on investment and trade are applied.

They shall coordinate their rules on company accounts.

4. Free trade

In order to promote the growth and diversification of trade, the signatories undertake progressively to remove the barriers to trade with each other in energy products, including the obstacles to the transit of such products across their territory.

They will encourage the development of the main international transmission grids, their opening up to users and their interconnection. To this end, they shall ensure the compatibility of the technical specifications governing the installation and operation of such grids, notably the stability of electricity grids.

5. Technical specifications and rules on safety

To promote free movement of energy products and equipment, the signatories shall, with due regard to the existing international agreements:

- apply technical specifications, rules and conformity test systems designed to maintain high standards on safety and the protection of health, the environment, and consumers' and workers' interests;
- to this end, formulate such technical specifications and common rules by joint agreement or agree to the mutual recognition of their specifications and rules.

6. Research, technological development and innovation

The signatories agree to promote exchanges of technology and cooperation on their research, technological development and innovation activities.

To this end, they shall encourage:

- the preparation of pilot or demonstration projects;
- the application of technological innovations;
- the dissemination of know-how and new technologies.

This action shall be taken subject to the international rules on the protection of industrial and commercial property.

Title III: SPECIFIC AGREEMENTS

In order to pursue the objectives of the Charter and implement it pursuant to Titles I and II, specific agreements shall be concluded between the States concerned and the European Community, signatories of the Charter.

The agreements shall be open to other States or international organizations concerned.

Each agreement shall be concluded for a limited duration and shall include:

- a description of the form of cooperation envisaged;
- details of the financial and administrative resources to be deployed.

These specific agreements will give priority to:

- nuclear energy and improvements in reactor safety;
- mining and clean coal technologies;
- efficient use of energy;
- development of renewable energy sources;
- use of natural gas and transmission via high-pressure gas pipelines;
- modernization of power stations, interconnection of power grids and transmission of electricity via high-voltage power lines;
- use and transportation of oil and oil products and modernization of refineries;
- transfers of technology and encouragement of innovation.

Title IV: ADMINISTRATION OF THE CHARTER

The representatives of the signatories shall confer at least once a year on application of this Charter. In particular, they shall review the measures taken, potential future developments and the infrastructure needed.

An ad hoc secretariat reflecting the composition of the signatories will be charged with the effective implementation of the Charter and the specific agreements. It could call on the services of other interested specialist organisations in the energy field.

As a transitional measure, and if necessary, the Commission of the European Communities shall monitor and coordinate the action taken.

Title V: SETTLEMENT OF DISPUTES

Disputes regarding the interpretation or application of the international agreements signed under this Charter shall be submitted to an Arbitration Board if they cannot be settled directly between the signatories concerned.

Each party in a dispute shall take the necessary steps to ensure that the decision of the Arbitration Board is implemented.

DOCUMENTS

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