

# ClientAlert

## Energy & Utilities

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## Russia rejects the Energy Charter Treaty

### Russian government adopts a decree declaring that Russia does not intend to become a party to the Energy Charter Treaty (ECT).

On 30 July 2009 the Government of the Russian Federation adopted Decree No. 1055-r on the issuance of an official notification that Russia does not intend to become a party to the Energy Charter Treaty (ECT) and its Protocol on Energy Efficiency and Related Environmental Aspects.

The Decree stipulates that Russia's notice shall be made in accordance with part (a) of Article 18 of the Vienna Convention on the Law of Treaties 1969 that provides that once a state signs a treaty, it is obliged to refrain from acts which would defeat the object and purpose of such treaty until the state makes its intention clear that it will not become a party to such treaty. It has been reported that on 6 August 2009 the Ministry of Foreign Affairs of the Russian Federation delivered an official notification expressing Russia's intention not to become a party to the ECT to the Government of the Portuguese Republic, which is the Depositary of the ECT.

In a document published on the website of the Ministry of Foreign Affairs on 7 August 2009 its representative stated that the ECT is no longer able to address new threats and challenges to the stability of energy markets and energy security and needs to be fundamentally revised, creating new legal architecture for cooperation in this sphere.

Russia's ratification of the ECT hinged on the outcome of negotiations of the ECT Transit Protocol, which would have facilitated transit of energy products on a non-discriminatory basis and set transparency standards for setting transit tariffs. Given the large volume of oil and gas coming from the Caspian Region for which Russia is a transit state, Russia had a particularly strong interest in seeing that the ECT Transit Protocol would take its concerns into account.

Negotiations on the ECT Transit Protocol began in early 2000 and a modified text was presented at the meeting of the Energy Charter Conference on 10 December 2003. However, it became clear that a unanimous decision could not be reached, and in December 2006 Russia indicated that the ratification of the ECT was unlikely due to the provisions requiring third-party access to Russian pipelines.



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In an attempt to find an alternative to the ECT, earlier this year President Dmitry Medvedev suggested a new document on the legal framework for international cooperation in the energy sphere that will include the principles of international energy cooperation, and a transit agreement targeting resolution of transit conflicts.

The ECT, which entered into force in 1998, is a legally binding multilateral treaty dealing specifically with inter-governmental cooperation and private investments in the energy sector on the Eurasian continent. It originated at the 1991 conference of the European Energy Charter, which was a political declaration of intent to open up the energy markets between Western Europe and the Soviet Union. To date, the ECT has been signed or ratified by more than 50 states. Russia signed but did not ratify the ECT, and, in accordance with the ECT, applied the treaty provisionally pending ratification where application of the ECT was consistent with existing laws and regulations.

The ECT's provisions focus on five broad areas:

- (1) the protection and promotion of foreign energy investments based on the extension of national treatment or most favored nation treatment (whichever is more favorable);
- (2) free trade in energy materials, products and energy-related equipment (as defined in Annex EM of the treaty) based on WTO rules;
- (3) freedom of energy transit through pipelines and grids;
- (4) mechanisms for the resolution of state-to-state or investor-to-state disputes; and
- (5) energy efficiency and related environmental aspects.

The ECT incorporates many WTO rules and principles and applies them directly to various aspects of trade and investment in energy products (the 1998 Amendment to the trade-related provisions of the ECT makes the relevant WTO rules applicable to contracting parties who are non-members of the WTO, pending admission).

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