

Brussels, 3-4 December 1998

Related documents: CC 137, RD 3 (ECC of 03- 04 12 1998)

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Consultations on a Multilateral Transit Framework

The Conference took note of the report of the Transit Working Group and approved the note submitted by the Working Group on issues to be covered in future consultations on a Multilateral Transit Framework [Annex.] The Chairman underlined that the list of issues provided was not exhaustive and could be expanded in the course of consultations as necessary.

Several delegations emphasised the need to ensure that electricity issues were covered within the Transit Working Group's activities. The Conference agreed with this and also approved the Chairman's proposal that the Group should establish to what extent, and as of when, hydrocarbons and electricity issues need to be treated separately.

[Attached is the Annex IX to doc. CC 137.]

MULTILATERAL TRANSIT FRAMEWORK

(non-exhaustive list of issues to be covered by analysis and consultations)

I. OBJECTIVES

1. The objectives of the framework should be to consolidate, further elaborate and develop international rules, standards and principles relevant to Energy Transit, with a view to:
 - enhancing legal and financial stability, certainty and predictability in order to stimulate Energy Transit activities and investments;
 - ensuring, facilitating and supporting freedom of transit;
 - increasing the viability, security and efficiency of multiple Energy Transit Facilities and activities.
 - ensuring environmentally safe Energy Transit Facilities.
2. All relevant Articles of the Energy Charter Treaty (ECT) shall apply. Submarine pipelines and cables governed by the Law of the Sea are not covered.

II. HORIZONTAL ISSUES

3. Energy Transit

- the notion of “sanctity” of energy transit (all obligations regarding transit of energy flowing from e.g. contracts/agreements between participating countries and public or private entities);
- the need to ensure that there will be no diversion or redirection of energy in transit by the Parties or any entities under their control or jurisdiction;
- acceptance that no intervention into activities in relation to energy transit can be made except for clearly defined objective reasons, such as public order and safety;
- facilitation of transit through existing facilities;
- the need to respect commercial agreements to use existing transportation facilities for transit;
- the adoption of the necessary measures to facilitate the development of new or expansion of existing Energy Transit Facilities, without imposing any unreasonable delays, restrictions or charges;
- agreement that legal provisions relating to the establishment and use of Energy Transit Facilities are not less favourable than those established for transport purposes only.

4. Principles Applying to Taxation and Other Fees & Charges

Common principles of taxation, based on inter alia GATT/WTO and OECD, and applicable to transit activities, energy materials and products in transit, and transit infrastructure respectively, may include the following:

- non-discrimination in customs and fiscal treatment for transit activities as compared with domestic energy transport, except as provided for in international agreements;
- internationally acceptable principles for taxation.

5. Accounting Principles

- establishing and maintaining transparent separate accounts for energy transit;
- conformance with internationally acceptable accounting principles for:
 - domestic energy undertakings;
 - international transactions;
- conformance with internationally acceptable reporting principles with regard to auditing and verification.

6. Safety and Environmental Aspects

- compliance of Energy Transit Facilities with safety and environmental standards, corresponding to internationally acceptable standards;
- international co-operation in early notification and mitigation of the effects of major interruptions, or transit accidents.

7. Liability

Questions of owner and operator liability in force majeure cases.

III. OPERATIONAL ISSUES

8. Competition

Aspects of access to and construction of capacity.

9. Capacity

Establishment of transparent rules for the operation of facilities, applicable to operators and eligible shippers on a fair and non-discriminatory basis.

10. Technical Standards

- procedures to establish consistent technical standards for the construction, operation, repair, replacement, expansion, extension and maintenance of transit facilities and related measuring and control equipment in accordance with internationally acceptable standards and practice and any specific project requirements;
- principles of metering, control and reporting.

11. Tariff Issues

- employment of cost-related and transparent tariff methodologies;
- consistent, transparent, non discriminatory rules for tariffs.

IV. RESOLUTION OF DISPUTES

12. Transit Dispute Settlement

- arbitration as an instrument for transit dispute settlement;
- Open the agreed conciliation facility of ECT Art.7(7)(f), dealing with transit related disputes to all parties;
- consent to the submission of a dispute under this framework to settlement in accordance with provisions of that facility.

V. OTHER

13. Relevant Project-Specific Issues

Any relevant project-specific issues could be dealt with in accordance with the provisions of model agreements (e.g. Model Host Government Agreement, possibly including fiscal issues, and Model Transport Agreement) that may constitute an integral part of this Framework.

14. Definitions