



Energy Charter

Draft

**FINAL ACT OF THE
INTERNATIONAL CONFERENCE
AND
DECISION BY
THE ENERGY CHARTER CONFERENCE
IN RESPECT OF THE
SUPPLEMENTARY TREATY
TO THE ENERGY CHARTER TREATY**

25 June 1998

**FINAL ACT OF THE INTERNATIONAL CONFERENCE
AND DECISION OF THE ENERGY CHARTER CONFERENCE**

- I. Acting in accordance with Article 10(4) of the Energy Charter Treaty, negotiations for a supplementary treaty began in December 1994 by the setting up of a Working Group to prepare the text. The Provisional Energy Charter Conference met a number of times and concluded the negotiations on the Supplementary Treaty to the Energy Charter Treaty (hereinafter referred to as the "Supplementary Treaty") in December 1997. A Conference to adopt the Supplementary Treaty was held at Brussels in two sessions on 23-24 April and on 24-25 June 1998.

Representatives of the Republic of Albania, the Republic of Armenia, Australia, the Republic of Austria, the Azerbaijani Republic, the Kingdom of Belgium, the Republic of Belarus, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the European Communities, the Republic of Finland, the French Republic, the Republic of Georgia, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, the Republic of Iceland, Ireland, the Italian Republic, Japan, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Republic of Moldova, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the Republic of Tajikistan, the former Yugoslav Republic of Macedonia, the Republic of Turkey, Turkmenistan, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the Republic of Uzbekistan (hereinafter referred to as "the representatives") participated in the Conference, as did invited observers from certain countries and international organisations.

- II. The Energy Charter Conference, which was definitively established on the entry into force on 16 April 1998 of the Energy Charter Treaty, also met in Brussels in April and June to consider adoption of the Supplementary Treaty.

THE SUPPLEMENTARY TREATY TO THE ENERGY CHARTER TREATY

- III. The text of the Supplementary Treaty which is set out in Annex 1 and Decisions with respect thereto which are set out in Annex 2 were adopted and it was agreed that the Supplementary Treaty would be open for signature at [...] from 28 September 1998 to 28 March 1999.

UNDERSTANDINGS

- IV. The following Understandings were adopted with respect to the Supplementary Treaty:

1. With respect to Article 10(2)

- (a) With respect to the foundation and establishment of banks and their licensing it is understood that Article 10(2) places on Contracting Parties no obligations relating to economic activities other than Economic Activities in the Energy Sector.
- (b) The obligation in Article 10(2) on a Contracting Party to accord treatment no less favourable than that which it accords to its own Investors or their Investments does not apply to the disposal by a Contracting Party of an asset described in Article 1(6)(a) of the Energy Charter Treaty which has a value of less than 75.000 Special Drawing Rights. However, a Contracting Party can not artificially partition an asset in order to evade the obligations of Article 10(2).
- (c) Public ownership and/or participation in the energy sector, including in monopolized and demonopolized sectors, is not as such regarded as contravening Article 10(2).

For the avoidance of doubt, and consistent with the Supplementary Treaty, a Contracting Party, when demonopolizing an activity, may establish transparent, objective, non-discriminatory conditions and requirements on the basis of which new entrants may take up the previously monopolized activity.

2. With respect to Article 10(3)

Restrictions in the constituent instruments of companies on the shareholdings or powers of Investors of other Contracting Parties and their Investments are regarded as contravening Article 10(2) if imposed or requested by a Contracting Party.

However, existing restrictions in such constituent instruments on the subsequent acquisition of privatised shares by Investors of other Contracting Parties are not affected by Article 10(2).

3. With respect to Article 10(3)(a)

It is understood that the individual exceptions in Annex EX do not affect the scope or interpretation of the Energy Charter Treaty.

4. With respect to Article 10(3)(b)

- (a) Restrictions on the percentage or type of shares which can be owned by a single holder or association of such holders are not a contravention of Article 10(2) unless such restrictions discriminate against Investors of other Contracting Parties and their Investments.
- (b) Reservation of a minority of shares in a privatised enterprise to particular categories of Investors, employees, customers or small shareholders, or preferential terms given to such categories, are not regarded as contravening Article 10(2) provided there is no legal discrimination against members of such categories that are nationals or legal entities of other Contracting Parties.
- (c) The enquiry points designated under Article 20(3) of the Energy Charter Treaty shall be ready, if the designating Contracting Party so wishes, to make information available either free or for a reasonable charge about plans and intentions regarding privatisation and reduction of exclusive and special privileges. They should be ready to supply to Investors all the non-confidential information needed to tackle specific problems concerning Investments.
- (d) Contracting Parties acknowledge that special share arrangements are compatible with Article 10(2), unless they explicitly or intentionally favour Investors or Investments of a Contracting Party or discriminate against Investors or Investments of another Contracting Party on the grounds of their nationality or permanent residency.

5. With respect to Article 10(2) to (5)

For the avoidance of doubt, the Decisions and Understandings which form part of the Final Act of the European Energy Charter Conference done in Lisbon on 17 December 1994 apply to the Supplementary Treaty.

DECLARATIONS

V. The following Declarations were made with respect to the Supplementary Treaty:

1. The Charter Conference will proceed to a review of the Investor-State dispute settlement provisions for the Supplementary Treaty not later than 2003; it may do so earlier when considering the possible application of Article 9.1.
2. The representatives have taken note of the position of a significant number of delegations that they attach importance to high standards of environmental protection and conservation and in the field of labour, and that they reaffirm their commitment to sustainable development, taking into account the principles on environmental standards already set out in Article 19 of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, together with measures incorporating social and labour considerations.

The representatives also took note that there was broad support for including a strong commitment in future on those issues.

3. Contracting Parties undertake that in the light of the results of the efforts underway in other international fora to establish and further develop multilateral rules governing investment, they will commence consideration, not later than 2003 or the entry into force of this Treaty, whichever is the later, of appropriate amendments to this Treaty with a view to the adoption of any such amendments by the Charter Conference.

VI. The representatives also noted the following Declarations that were made with respect to the Supplementary Treaty:

1. The Russian Federation declares that taking into consideration the process of transition to market economy and the corresponding changes in legislation, including some possible temporary restrictions on foreign investors and investments, the Russian Federation does not envisage a possibility of de-facto application of the Supplementary Treaty prior to its ratification. The Government does not intend to propose ratification of the Supplementary Treaty prior to the finalisation of accession procedures and the official accession to the WTO.
2. The Russian Federation further declares that it retains its right to apply measures of currency regulation restricting foreign investors and their investments to the extent they do not contradict the provisions of the Energy Charter Treaty.
3. Kazakhstan and Belarus declare that they retain their right to apply measures of currency regulation restricting foreign investors and their investments to the extent they do not contradict the provisions of the Energy Charter Treaty.

DOCUMENTATION

VII. The records of negotiations of the Supplementary Treaty will be deposited with the Secretariat.

Done at [...] on the twenty-eighth day of September in year one thousand nine hundred and ninety-eight.