Attachment

Preliminary DRAFT 22/01/2010

Energy Charter Secretariat

FINAL ACT

OF THE ENERGY CHARTER CONFERENCE

WITH RESPECT TO THE

ENERGY CHARTER PROTOCOL

ON TRANSIT

Final Act of the Energy Charter Conference

I. The meeting of the Energy Charter Conference was held at Brussels on [10 December 2003] // **Update needed** – **ECS comment**. 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, 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 Former Yugoslav Republic of Macedonia, the Republic of Malta, the Republic of Moldova, Mongolia**,** 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 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 Charter Conference, as did invited observers. // **Update needed in view of new Contracting Parties and possibly in view of CPs not signing** – **ECS comment**]

Background

II. In March 1998, Ministers of Foreign Affairs of Azerbaijan, Georgia, Kazakhstan, Turkey, Turkmenistan and Uzbekistan highlighted the necessity to create a commercially attractive environment for investments in oil and natural gas pipeline projects, by addressing the political considerations and the technical, financial, commercial and legal issues for the realisation of such pipelines. It was pointed out that such an approach is important for both the countries involved in these projects and the private companies intending to invest in them.

The G8 Energy Ministerial Meeting in Moscow on April 1, 1998 acknowledged that governments must play a role in creating an appropriate framework of conditions favouring the mobilisation of private capital for energy investment. In this regard, it was noted that the transit provisions set forth in the Energy Charter Treaty provide an important element in the creation of effective framework for the development of such conditions.

A Transit Working Group was established by the Energy Charter Conference at its meeting of 23 April 1998 with a view to pursuing further the work on transit issues.

The G8 Summit in Birmingham on May 17, 1998 recognised the importance of soundly based political and economic stability in the regions of energy

production and transit and the importance of international co-operation towards the development of commercially viable international energy transmission networks. It was agreed to pursue this co-operation bilaterally and multilaterally, including within the framework and principles of the Energy Charter Treaty.

[At its meeting on 7 December 1999, the Energy Charter Conference authorised the Transit Working Group to commence negotiations of an Energy Charter Protocol on Transit.] // **Update needed** – **ECS comment**

Negotiations were successfully completed in [2003.] // **Update needed** – **ECS comment**

THE ENERGY CHARTER PROTOCOL ON TRANSIT

III. The Energy Charter Conference has adopted the text of the Energy Charter Protocol on Transit (hereinafter the "Protocol") which is set out in Annex 1 and the Decision with respect thereto which is set out in Annex 2, and has agreed that the Protocol would be open for signature at Brussels from xxxx to yyyy, in accordance with its provisions.

UNDERSTANDINGS

IV. By signing the Final Act, the representatives agreed to adopt the following Understandings with respect to the Protocol:

1. ***With respect to the Protocol as a whole***

It is understood that nothing in this Protocol shall derogate from a Contracting Party's rights and obligations under international law, including customary international law, existing bilateral or multilateral agreements, including rules concerning submarine cables and pipelines.

Furthermore, it is understood that the provisions of this Protocol are subject to the conventional rules of international law. The provisions are not intended to affect the interpretation of existing international law on jurisdiction over submarine cables and pipelines or, where there are no such rules, to general international law.

For the purposes of this Protocol and without prejudice to any rights or obligations of the coastal state under international law, whenever an article is applied to the Area beyond the outer limits of the territorial seas, the term Contracting Party is understood to be the Contracting Party exercising jurisdiction over the owner or operator of the Energy Transport Facilities.

2. *With respect to the Protocol as a whole*

For the avoidance of doubt, this Protocol shall be in accordance with Article 6 of the Treaty.

3. *With respect to Article 1(2)*

It is understood that the definition of Available Capacity applies only in the context of this Protocol and shall not constitute a precedent in the use of this or similar concepts in other contexts.

4. *With respect to Article 1(2)*

It is understood that, for the purposes of this Protocol, "other fixed facilities" referred to in Article 7(10)(b) of the Treaty include specific installations designed to increase throughput capacity and stability of network oscillatory processes (e.g. devices to compensate for capacity currents and reactive power, direct current bridges or safety automatic devices).

5. *With respect to Article 1(2)(d)*

It is understood that, in the case of electricity, the term “operating margin” shall include, but not be limited to, electricity loop flows that result from electricity flows across different networks, possible reverse flows and a reserve for seasonal atmospheric factors.

6. With respect to Articles 2 and 10

An undertaking is considered to be in a dominant position in a given market when it is able to act independently of its competitors. Abuse of a dominant position is where such position is used to impose unfair or discriminatory conditions on those using the Energy Transport Facilities, for example by directly or indirectly imposing unfair Transit Tariffs or other conditions, or by unfairly restricting access to Available Capacity for Transit.

7. With respect to Article 4

For the purposes of this Protocol, it is understood that notwithstanding Article 7(10)(b) of the Treaty, the expression “Energy Transport Facilities used for Transit” excludes “other fixed facilities” to the extent that such facilities are not necessary to secure the flow of Energy Materials and Products in Transit through high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines and oil product pipelines**.**

8. With respect to Article 8(1) and Article 9(3)

It is understood that Article 8(1) and Article 9(3) are without prejudice to synchronous interconnection between grids presently interconnected through back-to-back Direct Current converters.

[The text of the following understanding resulted from the unofficial expert discussions in 2005 and 2006 as reflected by CC 315 dated 07.11.2006. It relates to Article 8.1, 8.4 (as proposed by the Russian paper submitted to the TTG on 10.06.2008) and 10.bis.]

9. With respect to Allocation of Transit Capacity

It is understood that the following procedures for allocation of transit capacity, or any combination of them, shall a priori be considered to be good faith negotiation:

a) First come first served, i.e. the allocation of capacity in order of date of receipt by the owner or operator of Energy Transport Facilities of a bona fide request for capacity, where:

   i. the procedure for dealing with requests will provide for a minimum waiting period before final allocation of available capacity in order to allow for competing requests during that waiting period and

   ii. the length of this waiting period and of the period between the allocation of capacity and the commencement of its effective use will bear a reasonable relationship to the duration of the transit period requested. Different procedures may be created in respect of different requested transit durations, but only one procedure shall be available in respect of any given requested transit duration.

b) Pro rata application in case where total requests exceed available capacity, i.e. the allocation of capacity to prospective users in proportion to the transport volumes respectively requested bona fide by them.

For the purpose of paragraphs (a) and (b) above, a request for capacity shall only be considered bona fide if supported by a credible commitment having regard to the volume, duration and commercial value of the requested capacity.

It is further understood that transparent procedures for the purposes of Article 8(1) shall necessarily include a procedure under which potential users of Energy Transport Facilities can obtain timely access to all relevant information concerning present and future Available Capacity in those Energy Transport Facilities as well as requested, but not yet allocated capacity.

It is further understood that the obligation pursuant to Article 8(1) to ensure that owners or operators of Energy Transport Facilities negotiate in good faith shall include an obligation to ensure that such owners or operators adopt procedures to prevent speculative hoarding and blocking of capacity including, inter alia, appropriate “use it or lose it” rules which may however reallocate lost capacity to the original shipper as soon as that shipper uses it.

10. With respect to Article 8(2)

In case of an incompatibility of technical specifications, including quality specifications of Energy Materials and Products, which cannot be reasonably

overcome, the owner or operator of Energy Transport Facilities used for Transit may refuse both access to and use of Available Capacity.

11. With respect to Article 10

The conditions provided for in Article 10 apply to access and use of Available Capacity as defined in Article 1 of this Protocol**.**

[The following additional Understanding with respect to Article 10 regarding ECT Article 7.3 was brought forward by the Russian paper submitted to the TTG on 10.06.2008 based on the unofficial EU-RuF expert meetings in 2005 and 2006]

12. With respect to Article 10 regarding ECT Article 7.3

It is understood that the application by a Contracting Party of the provisions of Article 10 of the Transit Protocol and of Article 7(3) of the Energy Charter Treaty may, due to the nature of the transportation of Energy Materials and Products, not necessarily result in tariffs for Transit (as defined in the Transit Protocol) of Energy Materials and Products which are identical in monetary terms to the tariffs for transportation of such Energy Materials and Products within the Area of that Contracting Party.

[From the report of the TTG Chair to the Rome Conference:
With regard to the Understanding on transit tariffs in relation to the draft TP Article 10 with respect to ECT Article 7.3, the European Communities is analysing the matter carefully in light of recent developments and keeps its position open when carrying this through to formal negotiations.]

[The following additional Understanding with respect to Article 10 regarding ECT Article 7.7 was brought forward by the Russian paper submitted to the TTG on 10.06.2008 based on the unofficial EU-RuF expert meetings in 2005 and 2006]

13. With respect to Article 10 regarding ECT Article 7.7

It is understood that where interim tariffs have been set pursuant to Article 7(7)(c) of the Treaty, the final resolution of the dispute concerning Transit tariffs, whether negotiated or by a judicial or arbitral decision, shall normally require that, in the overall context of the resolution of that dispute, any difference between the interim tariffs and the tariffs determined in the final resolution of the dispute shall be restituted inclusive of interest at a commercial rate established on a market basis.

[The following Understanding is proposed to be deleted and replaced by the new Article 10bis]
~~***14. With respect to Article 10(4)***~~

~~For the avoidance of doubt, the congestion management mechanisms include auctions. It is further understood that, if auctions are used, the Transit Tariffs determined by such auctions shall also be cost effective.~~

[A new Understanding 14 is proposed by the EU letter dated 18.03.2005 (see Message 577/05), with modifications according to CC 315 shown in bold]

14. With respect to Article 10 bis

It is understood that the term "congested points **or sections**" used in Article 10bis of this Protocol means that the total demand **over a given period** for Available Capacity at such **a** point in the Energy Transport Facility by all potential users exceeds the Available Capacity **over that period ~~in fact available~~**."

15. *With respect to Article 14(1)*

It is understood that the obligation laid down in Article 14(1) shall apply when metering and measuring equipment is installed in the vicinity of the international border at a convenient place mutually agreed by the owner or operator of Energy Transport Facilities used for Transit and the Contracting Parties or Entities of other Contracting Parties using such facilities.

16. *With respect to Article 15*

It is understood that the term "control", as used in Article 15 of this Protocol, has the same meaning as in the Understanding with respect to Article 1(6) of the Treaty.

17. *With respect to Article 21*

It is understood that, unless the parties to a dispute decide otherwise, the provisions in Article 21 will not be applied to a dispute concerning Energy Transport Facilities beyond the outer limits of the territorial seas if other dispute settlement procedures covering the subject matter of the dispute are applicable under other bilateral or multilateral agreements.

JOINT DECLARATIONS

V. By signing the Final Act, the representatives agreed to adopt the following Joint Declarations with respect to the Protocol:

1. *With respect to Article 12*

In order to eliminate technical barriers to Transit, the Charter Conference may examine measures relating to differences in quality of Energy Materials and Products of different origins being transported by Energy Transport Facilities used for Transit.

DECLARATIONS

VI. The representatives noted the following Declarations that were made with respect to the Transit Protocol:

1. *With respect to Article 10*

[The European Communities and their Member States declare that they shall interpret the term "transparent" in light of the transparency requirements of European Community law, and in particular, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning the common rules for the internal market in electricity and Directive 98/30/EC of the European Parliament and of the Council of 12 February 1998 concerning common rules for the internal market in natural gas.] // **Update needed** – **ECS comment**

2. *With respect to Article 20*

The European Community and its Members States:

The European Community and its Member States recall, pursuant to the Treaty establishing the European Community, Part Three ("Community Policies"), Title I ("Free Movement of Goods"), the principles of the free movement of goods within the European Community and of non-discrimination in treatment between like products of Community origin and those in free circulation originating from outside the Community;

The European Community and its Member States also recall, pursuant to the Treaty establishing the European Community, Part Three, Title VI, Chapter 1, ("Rules on Competition"), the principle of competitive markets within the European Community and in particular the prohibition of the abuse of dominant positions;

The European Community and its Member States further recall, pursuant to the Directives[1] currently in force concerning common rules for the internal markets in natural gas and electricity and on the transit of natural gas and electricity, that access to the natural gas and electricity systems in conformity with these Directives shall be based on objective, transparent, non-discriminatory and fair criteria;

[The European Community and its Member States also recall that the European Community and its Member States, as Contracting Parties, are bound by the provisions of the Energy Charter Treaty and associated instruments[2]. The legislation

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1 [i) Council Directive (90/547/EEC) of 29 October 1990 on the transit of electricity through transmission grids;
ii) Council Directive (91/296/EEC) of 31 May 1991 on the transit of natural gas through grids;
iii) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity;
iv) Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas.] // **Update needed – ECS comment**

2 The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects and the Amendment to the Trade-Related Provisions of the Energy Charter.

of the European Community and its Member States, including future legislative provisions, must be compatible with these instruments as well as with the Treaty establishing the European Community, all of which instruments are based on the principles of non-discrimination and open and competitive markets."] // **Update needed?** – **ECS comment**

DOCUMENTATION

The records of negotiations of the Protocol will be deposited with the Secretariat.

IN WITNESS WHEREOF the representatives have signed this Final Act. Done at [Brussels] on [xx] in the year [yyyy].

By unanimous decision of the Charter Conference, the original of this Final Act shall be deposited in the archives of the Portuguese Republic.

ENERGY CHARTER PROTOCOL

ON TRANSIT

PREAMBLE

The Contracting Parties to this Protocol,

Having regard to the European Energy Charter adopted in the Concluding Document of The Hague Conference on the European Energy Charter, signed at The Hague on 17 December 1991;

Being Contracting Parties to the Energy Charter Treaty adopted in the Final Act of the European Energy Charter Conference, signed in Lisbon on 17 December 1994 (hereinafter referred to as the "Treaty");

In pursuit of the ultimate purpose of the Treaty as stated in its Article 2;

Recalling the provisions of the Treaty, notably Article 7 establishing the principle of freedom of Transit;

Recognising the basic principles in international law establishing the freedoms of the high seas including the freedom to lay submarine cables and pipelines.

Noting Contracting Parties' rights and obligations pursuant to Articles 4 and 29 of the Treaty;

Acknowledging the importance of open energy markets, access to Energy Transport Facilities, as well as security of energy supply;

Wishing to strengthen further a clear and coherent set of international rules and principles promoting secure, efficient, uninterrupted and unimpeded Transit and International Energy Swap Agreements, as a means of promoting the economic growth and security of energy supply of all Contracting Parties;

Desiring to further liberalise the existing regimes of the Contracting Parties relating to Transit;

Wishing to develop further stable, equitable, favourable, objective, non-discriminatory and transparent market conditions for Transit;

Aiming to avoid Transit being impeded by any territorial disputes between or among Contracting Parties, which, as such, shall not be addressed by this Protocol;

Reaffirming their commitment to secure established flows and not to interrupt or reduce the existing flow of Energy Materials and Products in Transit;

Desiring to prevent unauthorised taking of Energy Materials and Products in Transit;

Acknowledging the existence of certain obstacles of a technical and non-technical nature to secure, efficient, uninterrupted and unimpeded Transit;

Recognising the need to ensure environmentally sound Transit of Energy Materials and Products in order to minimise and remedy damage to the environment;

Reaffirming the importance of protecting human, animal or plant life or health, and the maintenance of public order; and

Recalling that pursuant to Understanding 1(b) of the Treaty, the provisions of the Treaty and this Protocol do not oblige any Contracting Party to introduce mandatory third party access;

HAVE AGREED as follows:

PART I

DEFINITIONS, OBJECTIVES AND SCOPE

ARTICLE 1

DEFINITIONS

For the purposes of this Protocol, the definitions contained in the Treaty, and in particular those contained in Articles 1, 7 and 19, shall apply.

As used in this Protocol:

1. "Contracting Party" means a state or Regional Economic Integration Organisation which has consented to be bound by this Protocol and for which this Protocol is in force.

2. "Available Capacity" means the total physical operating capacity of the Energy Transport Facilities, less the physical operating capacity [time dimension may need to be added – **ECS comment**]:

   (a) necessary for the fulfilment of obligations by the owner or operator of the Energy Transport Facilities under any valid and legally binding agreements relating to the transportation of Energy Materials and Products;

   (b) necessary for the fulfilment of any other binding obligations pursuant to laws and regulations to the extent those laws and regulations are intended to ensure the supply of Energy Materials and Products within the territory of a Contracting Party;

   [The insertion in point 1.2(c) is proposed by the EU letter dated 18.03.2005 (see Message 577/05)]

   (c) regarding hydrocarbons, and subject to requirements for open access to Energy Transport Facilities applicable within a Contracting Party necessary to account for the reasonable requirements, including forecasted requirements**,** for the transportation of Energy Materials and Products which are owned by the owners or operators of the Energy Transport Facilities or their Affiliates[1]; and

   (d) necessary for the efficient operation of the Energy Transport Facilities, including any operating margin necessary to ensure the security and reliability of the system.

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[1] "Affiliate" means:
- any parent company, parent business enterprise or other parent organisation which owns directly or indirectly 100% of the shares of an owner or operator of Energy Transport Facilities; or
- any other company, business enterprise or other organisation of which such parent company, parent business enterprise or other parent organisation or such owner or operator owns directly or indirectly 100% of the shares.

3. "Entity" means:

   (a) with respect to a Contracting Party:

      (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law;
      (ii) a company or other organisation organised in accordance with the law applicable in that Contracting Party.

   (b) with respect to a "third state", a natural person, company or other organisation which fulfils, mutatis mutandis, the conditions specified in subparagraph (a) for a Contracting Party.

4. “Internationally Accepted Accounting Standards” means the standards which are accepted by a recognised consensus of, or have substantial authoritative support from, international accounting standard bodies with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

5. “Transit Agreement” means any agreement relating to Transit and which is entered into between:

   (a) a Contracting Party and an Entity of another Contracting Party; or
   (b) an Entity of a Contracting Party and an Entity of another Contracting Party.

6. “Transit Tariffs” means the payments required by the owner or operator of the Energy Transport Facilities for the Transit of Energy Materials and Products.

ARTICLE 2

OBJECTIVES

1. The objectives of this Protocol are:

   (a) to ensure secure, efficient, uninterrupted and unimpeded Transit for the benefit of all Contracting Parties concerned;

   (b) to promote transparent and non-discriminatory access to and use of Available Capacity in present and future Energy Transport Facilities used for Transit;

   (c) to facilitate efficient use of Energy Transport Facilities used for Transit;

   (d) to facilitate the construction, expansion, extension, reconstruction, and operation of Energy Transport Facilities used for Transit;

   (e) to minimise harmful Environmental Impacts of Transit;

(f) to promote the prompt and effective settlement of disputes relating to Transit.

2. Contracting Parties shall ensure that, in pursuing these objectives, the provisions of this Protocol shall apply in a fair and non-discriminatory manner, consistent with the provisions of the Treaty, in particular Articles 2, 3, 6 and 7 thereof, and shall include the prohibition of the abuse of a dominant position.

ARTICLE 3

THE RELATIONSHIP BETWEEN THE PROTOCOL AND THE TREATY

1. Nothing in this Protocol shall derogate from the provisions of the Treaty.

2. The provisions of this Protocol shall complement, supplement, extend or amplify the provisions of the Treaty.

[Slight modification or deletion of the following paragraph is proposed by the EU letter dated 18.03.2005 as EU believes it could give some misunderstanding or potential conflict with Article 3.1 above or even with ECT Article 33(5) -- the Russian paper submitted to the TTG on 10.06.2008 suggests deletion of the paragraph in line with the unofficial EU-RuF expert meetings]

3. [The provisions of the Treaty pertaining to its Article 7 shall apply in accordance with this Protocol.]

ARTICLE 4

SCOPE

1. Unless otherwise provided for in this Protocol, it shall apply to Energy Materials and Products in Transit through Energy Transport Facilities in the Area of a Contracting Party, Energy Transport Facilities used for such Transit and to International Energy Swap Agreements.

2. The provisions of this Protocol relating to access to Available Capacity shall apply for Transit purposes only; access to Available Capacity for purposes other than Transit is outside the scope of this Protocol.

3. Nothing in this Protocol affects the right of a Contracting Party to receive fair and reasonable benefits for facilitating the construction, expansion, extension and reconstruction of Energy Transport Facilities used for Transit within its territory. Contracting Parties reaffirm that that right must be exercised in accordance with and subject to the principles of international law.

PART II

GENERAL PROVISIONS

ARTICLE 5

TRANSIT AGREEMENTS

1. Each Contracting Party shall observe all obligations resulting from Transit Agreements it has entered into with Entities of other Contracting Parties.

2. No Transit Agreement concluded prior to the entry into force of this Protocol shall be challenged as being in violation of any provision of the Protocol.

3. Each Contracting Party shall ensure that its domestic law provides effective and non-discriminatory means for the assertion of claims and the enforcement of rights with respect to Transit Agreements.

ARTICLE 6

PROHIBITION OF UNAUTHORISED TAKING
OF ENERGY MATERIALS AND PRODUCTS IN TRANSIT

1. A Contracting Party, through whose territory Energy Materials and Products transit shall not take from, or interfere with, the flow of Energy Materials and Products in any manner inconsistent with the provisions of the Treaty or this Protocol, taking into account whether such taking or interference is specifically provided for in a contract.

2. A Contracting Party through whose territory Energy Materials and Products transit shall take all necessary measures to prohibit and address the unauthorised taking of such Energy Materials and Products in Transit by any Entity subject to that Contracting Party's control or jurisdiction.

ARTICLE 7

PROTECTION OF THE ENVIRONMENT

1. Contracting Parties shall take appropriate measures to ensure that Energy Transport Facilities are constructed, expanded, extended, re-constructed, operated, and maintained so as to minimise, in a Cost-Effective manner, harmful Environmental Impact.

2. Contracting Parties shall ensure that their domestic laws provide for an effective and non-discriminatory liability regime to remedy damage caused by Energy Materials and Products in Transit and Energy Transport Facilities used for Transit.

PART III

SPECIFIC PROVISIONS

ARTICLE 8

UTILISATION OF AVAILABLE CAPACITY

[Modifications to paragraphs 1 and 2 were brought forward by the Russian paper submitted to the TTG on 10.06.2008 based on the unofficial EU-RuF expert meeting in the first half of 2006]

1. Each Contracting Party shall ensure that owners or operators of Energy Transport Facilities (ETF) under its jurisdiction will negotiate in good faith with any other Contracting Parties or Entities of Contracting Parties requesting access to and use of Available Capacity for Transit. ~~Such negotiations shall be based on transparent procedures, on commercial terms, and be~~ A Contracting Party may choose to create a regulated system for access to ETF's including for the purposes of Transit. In any case the applicable procedures shall be transparent and non-discriminatory as to the origin, destination or ownership of the Energy Materials and Products and shall not diminish in any way the rights of access to ETF's under this Protocol.

2. Contracting Parties shall ensure that owners or operators shall be obliged to provide a duly substantiated explanation in case of not according in whole or in part access to and use of Available Capacity for Transit.

3. Each Contracting Party has the right to deny the advantages of this Article to any Entity of Contracting Parties, if the denying Contracting Party establishes that such Entity of a Contracting Party is owned or controlled directly or indirectly by an Entity of a third state in respect of which the denying Contracting Party:

   (a) does not maintain a diplomatic relationship; or

   (b) adopts or maintains measures that:

      (i) prohibit transactions with Entities of that state; or
      (ii) would be violated or circumvented if the benefits of this Article were accorded to Entities of that state.

[The following revised paragraph 4 was brought forward by the Russian paper submitted to the TTG on 10.06.2008 based on the unofficial EU-RuF expert meeting in the first half of 2006]

4. (A) A Contracting Party or an Entity of a Contracting Party (the Requesting Entity) which needs Available Capacity in the Area of another Contracting Party (the Transit Contracting Party or TCP), to fulfil a hydrocarbon supply contract or other hydrocarbon supply undertaking which either exists or is planned and supported by a credible commitment, shall duly notify a reasonable time in advance, with all necessary information in line with normal industry practice, the owners or operators of relevant Energy Transport Facilities under the TCP's jurisdiction (the TSO) of this need.

(B) The TCP, in relation to the requests under paragraph (A) (the Requests), shall ensure that the relevant TSOs will respond to all such Requests in good faith and in due time. With respect to the duration of any resulting Transit Agreement, the TCP shall ensure that, where the requested duration is reasonable having regard to any relevant [competition] law and the characteristics of the Request, the TSO shall grant the request duration.

(a) To the extent that the totality of Requests can be satisfied from existing Available Capacity, the TCP shall ensure that the TSO offers at cost-reflective tariffs (subject to Article 10) and on a competitive and non-discriminatory basis, including with respect to all other legitimate requests for Available Capacity other than for the purposes of Transit, sufficient Available Capacity to satisfy the Requests.

(b) To the extent that the totality of Requests cannot be satisfied from existing Available Capacity and

(i) the Requests are backed by a credible commitment[2];

(ii) the Requests are made with sufficient advance notice having regard to the investment necessary to permit their satisfaction; and

(iii) the Requests are sufficient in volume and duration to justify that investment from the viewpoint of economic viability (and to the extent that such investment is not forthcoming from other Entities),

the TCP shall, on a transparent and non-discriminatory basis, in conformity with the Treaty and notably its Articles 7(4), 7(5) and 7.9:

(I) endeavour to have the investment necessary to permit the satisfaction of the Requests (to the extent that the Requests satisfy the conditions in b) above) carried out, so that the resulting Available Capacity in response to the Requests is offered (whether through an open season procedure or otherwise) at cost-reflective tariffs (subject to Article 10) and on a competitive and non-discriminatory basis; and/or

[2] Turkey proposed revising the wording to ensure that Requests are backed by throughput guarantee

(II) ensure, subject to its regulatory framework[3], that the Requesting Entity, whose Request relates to a supply contract (the Contract) in force at the date of the Request and calls for the renewal or prolongation of a corresponding transit agreement in force at that date which was granted in response to an earlier request which was not satisfied as to the Contract's entire duration, and which Requesting Entity has not previously been offered Available Capacity corresponding to the Request, and which Contract continues at least until the end of the period of the Request, is given the first opportunity to take up any Available Capacity necessary to satisfy the Request which is offered by the TSO in the future.

ARTICLE 9

CONSTRUCTION, EXPANSION, EXTENSION, RECONSTRUCTION AND OPERATION OF ENERGY TRANSPORT FACILITIES USED FOR TRANSIT

1. Contracting Parties shall have in place authorisation procedures or legislation concerning the construction, expansion, extension, re-construction, and operation of Energy Transport Facilities used for Transit within its territory.

2. Without prejudice to Article 10 of the Treaty, the Contracting Parties undertake that:

   (a) the authorisation procedures or legislation referred to in paragraph 1 shall be objective, transparent and non-discriminatory as to the origin, destination and ownership of the Energy Materials and Products; and

   (b) measures relating to the construction, expansion, extension and reconstruction referred to in paragraph 1 shall be no less favourable than measures relating to the construction, expansion, extension and reconstruction of Energy Transport Facilities used for internal transportation of Energy Materials and Products in the territory of that Contracting Party.

3. (a) When a Contracting Party or its Entity submits an application for permission to construct, expand, extend, reconstruct or operate Energy Transport Facilities used for Transit in the territory of another Contracting Party, the latter shall reply in writing within a reasonable time and shall ensure that its decision is fair, transparent, based on objective considerations, and does not discriminate on grounds of ownership, origin or destination of the Energy Materials and Products.

   (b) The applicant Contracting Party may request the Secretary General to communicate the decision of the replying Contracting Party referred to in subparagraph (a) to other Contracting Parties or Entities of other Contracting Parties, as may be concerned.

[3] As proposed by the EU at the TTG meeting on 15.10.2008 and agreed to be included as a wording modification at the TTG meeting on 13.02.2009

ARTICLE 10

TRANSIT TARIFFS

1. Each Contracting Party shall take all necessary measures to ensure that Transit Tariffs and other conditions are objective, reasonable**,** transparent and do not discriminate on the basis of origin, destination or ownership of Energy Materials and Products in Transit.

2. Each Contracting Party shall ensure that Transit Tariffs and other conditions are not affected by market distortions, in particular those resulting from abuse of a dominant position by any owner or operator of Energy Transport Facilities used for Transit.

3. Transit Tariffs shall be based on operational and investment costs, including a reasonable rate of return. [**reference to new Article 10 bis needed – ECS comment**]

4. Subject to paragraphs 1, 2 and 3 of this Article, Transit Tariffs may be determined by appropriate means, including regulation, commercial negotiations or congestion management mechanisms.

[A new Article 10 bis is proposed to be inserted by CC 315 dated 07.11.2006 with revisions discussed at the TTG meeting on 26.02.2008 in bold. This was also supported by the Russian paper submitted to the TTG on 10.06.2008.

Deletion of para 3.b and, accordingly, a re-arrangement of para 3 was proposed by some delegations and supported by all delegations at the TTG meeting on 15.10.2008]

ARTICLE 10 bis
CONGESTION MANAGEMENT MECHANISMS

1. Congestion management mechanisms including **first come first served, pro rata* or** auctions[4] may only be used for allocating Available Capacity, and in the formation of Transit Tariffs, with respect to congested points or sections in the relevant Energy Transport Facilities and only in a fair, transparent and non-discriminatory manner between all potential users seeking access to that Available Capacity. Contracting Parties shall ensure, in conformity with the relevant provisions of this Protocol and of the Energy Charter Treaty, that all reasonable measures are taken to mitigate the congestion and the associated use of congestion management mechanisms.

2. No Contracting Party shall permit auctions in relation to a specific congestion point or section for longer than is reasonable having due regard to:

(a) the extent to which measures for relieving the relevant congestion are technically feasible;

[4] The letter by Ukraine dated 17.11.2008 proposed "auctions" to be the only mechanism for congestion management.

(b) the economic costs and benefits of such measures; and

(c) the environmental or other substantively justifiable restrictions upon such measures.

3. Where sustained or recurrent use of a congestion management mechanism and notably the use of auctions causes a Transit Tariff to be in excess of that required under Article 10.3, the excess revenues generated to this extent shall be used for reducing or mitigating current or foreseeable congestion, including, where appropriate, reasonable measures for maintaining or restoring physical operating capacity, if not already included in the Transit Tariffs envisaged by Article 10 (3) of this Protocol

* *First come - first served* means the allocation of capacity in order of date of receipt by the owner or operator of Energy Transport Facilities of a bona fide request for capacity. *Pro rata* application means the allocation of capacity to prospective users in proportion to the transport volumes respectively requested bona fide by them. A request for capacity shall only be considered bona fide if supported by a credible commitment having regard to the volume, duration and commercial value of the requested capacity. **[See also *Understanding 9 with respect to Allocation of Transit Capacity*]**

ARTICLE 11

CHARGES

Any charges imposed by a Contracting Party on Transit of Energy Materials and Products within its territory shall fully comply with Article V of GATT 1994.[5]

ARTICLE 12

TECHNICAL AND OTHER RELEVANT STANDARDS

Contracting Parties shall use their best endeavours to agree on generally accepted international technical standards for the construction, expansion, extension, reconstruction, operation and maintenance of Energy Transport Facilities used for Transit, including relevant standards concerning the environment, health, safety and social aspects of such activities, and subsequently use such standards as the basis for their national regulations.

ARTICLE 13

[5] The letter by Georgia dated 26.11.2008 proposed the addition of the following new paragraph: "Contracting Party (when country is not owner and/or operator of transit facility) may demand transit fee for Transit of Energy Materials and Products through its territory"

ACCOUNTING STANDARDS

1. Each Contracting Party shall either implement national accounting standards, or refer to Internationally Accepted Accounting Standards and shall apply such standards to the accounting of the financial performance of Energy Transport Facilities where the use of these facilities includes Transit.

2. Each Contracting Party shall require the owners or operators of such facilities to comply fully and properly with such accounting standards.

3. Each Contracting Party shall use its best endeavours to implement Internationally Accepted Accounting Standards as its national accounting standards at least with regard to consolidated accounts.

ARTICLE 14

METERING AND MEASURING

1. Each Contracting Party shall ensure that the owners or operators of Energy Transport Facilities used for Transit within its territory have the quantity and the quality of Energy Materials and Products crossing international borders metered and measured by appropriate metering and measuring equipment.

2. Each Contracting Party shall encourage that the terms of access to metering and measuring equipment and their readings are agreed between the owners or operators of Energy Transport Facilities and the Contracting Parties or Entities of other Contracting Parties using such Energy Transport Facilities for Transit within its territory.

3. Contracting Parties shall use their best endeavours to agree on regular calibration of the metering and measuring equipment referred to above and shall regularly consult with each other concerning the implementation of this Article.

ARTICLE 15

SUPPLY OF ENERGY MATERIALS AND PRODUCTS

1. Each Contracting Party shall ensure that no owner of Energy Materials and Products in Transit under its control refuse to negotiate in good faith, on the basis of transparent and non-discriminatory procedures and on commercial terms, to supply Energy Materials and Products to the Contracting Party through whose territory such Transit occurs.[6]

[6] Turkey proposed that the dTP should address the concerns of transit countries about supply security and diversification and that this issue should be reflected by appropriate wording in the Protocol.

2. Failure of such negotiations[7] shall not be a reason for refusing Transit, reducing Transit volumes, or refusing to negotiate access to and use of Available Capacity used for Transit in accordance with Article 8(1).

ARTICLE 16

ACCIDENTAL INTERRUPTION, REDUCTION OR STOPPAGE OF TRANSIT

1. Each Contracting Party shall ensure that owners and operators of Energy Transport Facilities used for Transit take necessary measures:

   (a) to minimise the risk of accidental interruption, reduction or stoppage of Transit;
   (b) to expeditiously restore the normal operation of such Transit which has been accidentally interrupted, reduced or stopped.

2. Contracting Parties shall immediately notify any other Contracting Party concerned of accidental interruption, reduction or stoppage of Transit and the cause thereof; they shall also provide a realistic assessment as to when Transit can be resumed.

[7] The letter by Georgia dated 26.11.2008 proposed the following modification: "… such negotiations **have to be justified by commercial and/or any other reasonable motivation, but** shall not …"

PART IV

INTERNATIONAL ENERGY SWAP AGREEMENTS

ARTICLE 17

INTERNATIONAL ENERGY SWAP AGREEMENTS

1. "International Energy Swap Agreement" means any agreement relating to the exchange of a quantity of energy in the territory of one Contracting Party for an equivalent quantity of energy of the same type in the territory of another Contracting Party and which is entered into between:

   (a) a Contracting Party and an Entity of another Contracting Party; or
   (b) an Entity of a Contracting Party and an Entity of another Contracting Party.

2. Contracting Parties shall not place obstacles to the conclusion or execution of International Energy Swap Agreements, except as may be otherwise provided in applicable legislation.

3. Each Contracting Party shall observe all obligations resulting from International Energy Swap Agreements it has entered into with Entities of other Contracting Parties.

4. Each Contracting Party shall ensure that its domestic law provides effective and non-discriminatory means for the assertion of claims and the enforcement of rights with respect to International Energy Swap Agreements.

5. A Contracting Party shall not take, or interfere with, Energy Materials and Products exchanged under International Energy Swap Agreements in any manner inconsistent with the provisions of the Treaty or this Protocol, taking into account whether such taking or interference is specifically permitted in a contract.

6. A Contracting Party in whose territory Energy Materials and Products are exchanged under International Energy Swap Agreements shall take all necessary measures to prohibit and address the unauthorised taking of such Energy Materials and Products by any Entity subject to that Contracting Party's control or jurisdiction.

PART V

IMPLEMENTATION AND COMPLIANCE

ARTICLE 18

IMPLEMENTATION AND COMPLIANCE

1. Each Contracting Party shall ensure that all relevant legislative, regulatory and administrative provisions in connection with Transit are administered in a reasonable, objective and impartial manner.

2. Each Contracting Party shall respond promptly to requests by any other Contracting Party for specific information on its legislative, regulatory and administrative provisions or bilateral or multilateral agreements, which pertain to or affect the implementation of this Protocol.

3. Each Contracting Party shall submit to the Secretariat within reasonable time a report summarising all laws, regulations and other measures of judicial or institutional nature, relating to the implementation of this Protocol.

4. A Contracting Party shall keep its report up to date by promptly submitting amendments to the Secretariat. The Charter Conference shall review these reports periodically.

5. Any Contracting Party may notify to the Secretariat any action or failure to act**,** by any other Contracting Party, which it considers pertaining to or affecting the implementation of this Protocol.

6. The Charter Conference may receive and consider reports from Contracting Parties wishing to express concerns regarding another Contracting Party's implementation of its obligations under this Protocol.

ARTICLE 19

TRANSITIONAL ARRANGEMENTS

Contracting Parties listed in Annex PTA may temporarily suspend full compliance with its obligations under one or more of the following provisions of the Protocol:

Article 9(1)
Article 9(2)(b)
Article 12
Article 14
Article 17(2)

Contracting Parties, which have temporarily suspended full compliance under this Article, undertake to comply fully with the relevant obligations by [1 July 2007.] // **Update needed – ECS comment**

ARTICLE 20

REGIONAL ECONOMIC INTEGRATION ORGANISATION

1. For the purposes of this Protocol, the "Area" of a Contracting Party referred to in Article 7(10)(a) of the Treaty shall, as regards Contracting Parties which are members of a Regional Economic Integration Organisation, mean the area to which the treaty establishing such a Regional Economic Integration Organisation applies.

[A modification to paragraph 2 was brought forward by the Russian paper submitted to the TTG on 10.06.2008 based on an EU wording discussed during the unofficial EU-RuF expert meeting in February 2005]

2. A Regional Economic Integration Organisation undertakes to ensure that its provisions treat Energy Materials and Products originating in another Contracting Party and in free circulation in its Area no less favourably than Energy Materials and Products originating in its constituent member-states. Furthermore, the rules of a Regional Economic Integration Organisation shall provide an overall standard at least equivalent to that which would result from the provisions of this Protocol were it not for Article 20(1) of this Protocol.[8]

[Insertion of a new paragraph 3 was brought forward by the Russian paper submitted to the TTG on 10.06.2008 based on the unofficial EU-RuF expert meeting in April 2005]

3. When the movement of Energy Materials and Products originating from outside the territory of the REIO and destined for this REIO and /or its members is covered by the definition of Transit as contained in Article 7(10) of the ECT in relation to crossing the borders of a Contracting Party – member of the REIO, the Contracting Party through whose Area the Energy Materials and Products pass shall ensure that the owners or operators of Energy Transport Facilities under its jurisdiction implement in its territory the provisions of the Energy Charter Protocol on Transit in relation to these Energy Materials and Products, up to the first change of property right for this EMP occurring in the territory of the REIO.[9] [10]

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[8] **Switzerland emphasized that this paragraph needs to be scrutinized taking into consideration WTO principles (TTG meeting on 15.10.2008).**

[9] **The report of the TTG chair to the Conference in Rome makes the following points:** With respect to Article 20, the European Communities re-emphasised that Article 20.1 is a sine qua non for a potential agreement on the Protocol. The EU is prepared to accept Article 20.2 in the context of overall agreement, while the proposal for including a new sub-paragraph 20.3 is unacceptable to the EU. Some delegations asked for further clarification about the treatment of energy flows inside the EU with respect to being under EU or EU member state competence. The European Communities emphasized that any transportation destined to points inside the EU area as a REIO will not constitute transit. Transit would be constituted by energy crossing the whole of the EU in which case either the EU acquis or national legislation of the EU member states would apply, which would meet the standard set by the draft TP.

[10] **The European Commission noted that the EU Acquis is an integrated package determined by the European Communities, as any other Charter country, and there exists a single set of legislation for energy movements inside the EU, which makes no discrimination with respect to source or ownership of energy. On this ground, paragraph 20.3 as proposed by the Russian paper dated 10.06.2008 is not acceptable to the EU (TTG meetings on 15.10.2008 and 13.02.2009).**

PART VI

DISPUTE SETTLEMENT

ARTICLE 21

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

If a dispute concerning the application or interpretation of this Protocol, either exclusively or in conjunction with the Treaty, has not been settled through diplomatic channels within a reasonable period of time, either Contracting Party may, upon written notice to the other party to the dispute, submit the matter to an ad hoc arbitral tribunal in accordance with, mutatis mutandis, the procedures of Article 27, paragraph 3, of the Treaty.

PART VII

INSTITUTIONAL PROVISIONS

ARTICLE 22

THE ROLE OF THE CHARTER CONFERENCE

All decisions made by the Charter Conference in accordance with this Protocol shall be made by only those Contracting Parties to the Treaty who are Contracting Parties to this Protocol.

ARTICLE 23

SECRETARIAT AND FINANCING

1. The Secretariat established by Article 35 of the Treaty shall provide the Charter Conference with all necessary assistance for the performance of its duties under this Protocol and provide such other services in support of the Protocol as may be required, subject to approval by the Charter Conference.

2. The costs of the Secretariat and Charter Conference arising from this Protocol shall be met by the Contracting Parties to this Protocol according to their capacity to pay, determined according to the formula specified in Annex B to the Treaty.

PART VIII

FINAL PROVISIONS

ARTICLE 24

SCOPE OF FINAL PROVISIONS

Subject to the provisions contained in this Part, the Final Provisions of the Treaty shall apply mutatis mutandis to this Protocol.

ARTICLE 25

SIGNATURE

This Protocol shall be open for signature at [Brussels from xx to yy] by the states and Regional Economic Integration Organisations which are signatories to the Treaty or have acceded to the Treaty.

ARTICLE 26

RATIFICATION, ACCEPTANCE OR APPROVAL

This Protocol shall be subject to ratification, acceptance or approval by signatories. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

ARTICLE 27

ACCESSION

This Protocol shall be open for accession, from the date on which the Protocol is closed for signature, by states and Regional Economic Integration Organisations which have signed the Charter and are Contracting Parties to the Treaty, on terms to be approved by the Charter Conference. The instruments of accession shall be deposited with the Depositary.

ARTICLE 28

AMENDMENTS

1. Any Contracting Party may propose amendments to this Protocol.

2. The text of any proposed amendment to this Protocol shall be communicated to Contracting Parties by the Secretariat at least three months before the date on which it is proposed for adoption by the Charter Conference.

3. Amendments to this Protocol, the texts of which have been adopted by the Charter Conference, shall be communicated by the Secretariat to the Depositary which shall submit them to all Contracting Parties for ratification, acceptance or approval.

4. Instruments of ratification, acceptance or approval of amendments to this Protocol shall be deposited with the Depositary. Amendments shall enter into force between Contracting Parties having ratified, accepted or approved them on the thirtieth day after deposit with the Depositary of instruments of ratification, acceptance or approval by at least three-fourths of the Contracting Parties. Thereafter, the amendments shall enter into force for any other Contracting Party on the thirtieth day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendments.

ARTICLE 29

ENTRY INTO FORCE

[Changing the number of ratifications for entry into force from four to ten is proposed by the EU letter dated 18.03.2005 as EU greatly prefers for the TP to come into force as far as possible for a significant number of countries in an unambiguous manner and within a similar timeframe and does not wish to become committed to the Protocol without the equal commitment of other parties, particularly and including those of major significance with respect to energy Transit.]

1. This Protocol shall enter into force on the thirtieth day after the date of deposit of the tenth [fourth] instrument of ratification, acceptance or approval thereof, or of accession thereto, by a state or Regional Economic Integration Organisation which is a Contracting Party to the Treaty.

2. For each state or Regional Economic Integration Organisation for which the Treaty has entered into force and which ratifies, accepts, or approves this Protocol or accedes thereto after the Protocol has entered into force in accordance with paragraph (1), the Protocol shall enter into force on the thirtieth day after the date of deposit by such state or Regional Economic Integration Organisation of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraph (1), any instrument deposited by a Regional Economic Integration Organisation shall not be counted as additional to those deposited by member states of such organisation.

[The following Article 30 is proposed to be deleted by the EU letter dated 18.03.2005 as EU believes that provisional application of the Protocol is inappropriate, unnecessary and would give rise to confusion in its application]

[ARTICLE 30

PROVISIONAL APPLICATION

1. Each signatory agrees to apply this Protocol provisionally pending its entry into force for such signatory in accordance with Article 29, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

2. (a) Notwithstanding paragraph (1) any signatory may, when signing, deliver to the Depositary a declaration that it is not able to accept provisional application. The obligation contained in paragraph (1) shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notification to the Depositary.

   (b) Neither a signatory which makes a declaration in accordance with subparagraph (a) nor Entities of that signatory may claim the benefits of provisional application under paragraph (1).

3. Any signatory may terminate its provisional application of this Protocol by written notification to the Depositary of its intention not to become a Contracting Party to the Protocol or by withdrawal in accordance with Article 31. Termination of provisional application for any signatory shall take effect upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depositary.

4. A state or Regional Economic Integration Organisation which, prior to this Protocol's entry into force, accedes to the Protocol in accordance with Article 27 shall, pending the Protocol's entry into force, have the rights and assume the obligations of a signatory under this Article.**]**

ARTICLE 31

WITHDRAWAL

1. At any time after five years from the date on which this Protocol has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depositary of its withdrawal from the Protocol.

2. Any Contracting Party that withdraws from the Treaty shall be considered to have withdrawn from this Protocol.

3. The effective date of withdrawal under paragraph (1) shall be ninety days after receipt of notification by the Depositary. The effective date of withdrawal under paragraph (2) shall be the same as the effective date of withdrawal from the Treaty.

ARTICLE 32

STATUS OF ANNEXES AND DECISIONS

The Annexes to this Protocol and the Decision set out in Annex 2 to the Final Act of the Energy Charter Protocol on Transit are integral parts of the Protocol.

ARTICLE 33

DEPOSITARY

The Government of the Portuguese Republic shall be the Depositary of this Protocol.

ARTICLE 34

AUTHENTIC TEXTS

In witness whereof the undersigned, being duly authorized to that effect, have signed this Protocol in English, French, German, Italian, Russian and Spanish, of which each text is equally authentic, in one original, which will be deposited with the Government of the Portuguese Republic.

ANNEXES TO THE PROTOCOL

ANNEX PTA

CONTRACTING PARTIES' TRANSITIONAL MEASURES
(In accordance with Article 19)

List of Contracting Parties entitled to transitional arrangements.

Georgia

Article 9(1), Article 9(2)(b), Article 12 and Article 14

Ukraine

Article 17(2)

The Republic of Uzbekistan

Article 17(2)

ANNEX RG

Without prejudice to the scope of the this Protocol, for the purposes of the comparative determination required by Article 9, 10 and 11, Transit Agreements or agreements relating to construction, operation or use of an Energy Transport Facility used for the Transit of Energy Materials and Products concluded by Georgia or a state entity of Georgia, prior to the adoption of the text of this Protocol, shall not serve as the basis for such determination.

[Possible deletion depending on the final outcome of Article 8 – ECS comment]

[DECISION WITH RESPECT TO THE TRANSIT PROTOCOL

The Energy Charter Conference has adopted the following decision:

With respect to Article 8(4)

1. The application of Article 8(4) becomes effective when the Russian Federation deposits its instruments of ratification of the Energy Charter Protocol on Transit.

2. The Charter Conference should periodically consider the effects of Article 8(4) on security of supply and competition.]