

**ENERGY CHARTER  
SECRETARIAT**

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Brussels, 7 December 1999

Related documents: CC 151, CC 162
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**DECISION OF THE ENERGY CHARTER CONFERENCE**

*adopted by the Energy Charter Conference  
at its 4<sup>th</sup> Meeting held on 7 December 1999*

**CONCLUSIONS**

[recommended by the November 1999 Investment Group meeting]

**The Charter Conference,**

having reviewed the pre-investment exceptions notified in accordance with Article 10(9);

taking due note of Articles 10(2) and 10(5) requiring Contracting Parties/Signatories to endeavour to accord the better of national treatment, to endeavour to limit pre-investment exceptions to the minimum and progressively remove existing non-conforming measures;

**NOTED**

- a) that the review has shown modest steps towards liberalisation and enhanced transparency, and that there is a positive evidence that the rollback on exceptions is occurring as part of the transition to market economy;
- b) that the review has revealed a satisfactory development in that there has been no significant departure from the treatment standard in Article 10(5)(a) of the Treaty;
- c) that the review did not identify any economically relevant case where newly introduced non-conforming measures decreased the conformity of the existing exceptions; they were limited in numbers as well as with regard to their potential impact on the Making of Investments in the energy sector; and
- d) that twelve Contracting Parties/Signatories have no exceptions to national treatment;
- e) in particular, that:
  - (i) Armenia

Keywords: Pre-Investment Exceptions, Armenia, Poland, Russian Federation

is already in the process of phasing out the exception concerning the limitations on activities in certain territories on grounds of national security considerations;

shall consider the removal of the exception concerning the limitations on foreign investors' right to buy land since the nationally registered company is not considered as a foreign legal or natural person and therefore not covered by the existing measure (the law therefore would have marginal or no effect as far as investments in the energy sector are concerned);

(ii) Poland

although maintaining six exceptions to national treatment, has five which are deemed to have minor or no influence on the Making of Investment in the energy sector; and

(iii) the Russian Federation

introduced the new Foreign Investment Law which entered into force on 9 July 1999 contributing to the positive development towards liberalisation where national treatment is the legally stated standard and limitations of foreign investors may be made only by federal authorities and only if it is required for the purposes of protecting the constitutional system, morals, health, rights and lawful interests of others, national defence and state security.

## **CONCLUDED**

with respect to Poland that

- a) the Conference, at its 2<sup>nd</sup> Meeting on 3-4 December 1998, drew the following conclusion in relation to the Polish bills on Economic Activity and Foreign Exchange: "With respect to the two new measures introducing exceptions to MFN not covered by Articles 24 and 25 of the Treaty, the Conference noted that while those measures constituted an applaudable move towards liberalisation the Conference encouraged Contracting Parties to refrain from introducing new MFN exceptions in the future.";
- b) Poland should refrain from introducing new MFN exceptions;
- c) despite Polish explanations at the Review Session, Poland is urged to review the drafting of the non-conforming provisions in the context of its overall commitments under the Treaty.