

**ENERGY CHARTER  
SECRETARIAT**

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Related documents: CC 173, RD 3 (ECC of 29 06 2000)
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**DECISION OF THE ENERGY CHARTER CONFERENCE**

**Subject: Investment Climate and Exceptions to National Treatment Reports**

[The Energy Charter Conference at its 5<sup>th</sup> Meeting held on 29 June 2000 noted] the surveys conducted by the Investment Group of Reports on Investment Climate and Exceptions to National Treatment from Albania, Azerbaijan, Latvia and the former Yugoslav Republic of Macedonia, as well as the survey of pre-investment exceptions notified in accordance with Article 10(9) by the Russian Federation.

[With respect to these surveys, the Conference adopted the Conclusions attached at Annex.]

Keywords: Investment Issues, Investment Climate, Exceptions, National Treatment, Albania, Azerbaijan, Estonia, Latvia, FYROM, Former Yugoslav Republic of Macedonia, Russian Federation

## **Conclusions with respect to Reports on Investment Climate Issues**

[as adopted by the Energy Charter Conference  
at its 5<sup>th</sup> Meeting held on 29 June 2000]

### **The Charter Conference,**

having heard the report from the Investment Group with respect to the Reports on Investment Climate and Exceptions to National Treatment from Albania, Azerbaijan, Estonia, Latvia and the former Yugoslav Republic of Macedonia and pre-investment exceptions notified in accordance with Article 10(9) by the Russian Federation;

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

### **NOTED**

- a) that the reviews have shown significant progress in the legislative framework in the reviewed countries, reasonable steps towards liberalisation and enhanced transparency, and a positive evidence concerning the rollback of non-conforming measures;
- b) that the reviews have 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 reviews did not identify any economically relevant case where a new measure decreased the conformity of the measure with the non-discrimination standard; the exceptions were limited in numbers as well as with regard to their potential impact on the Making of Investments in the energy sector; and
- d) in particular, with respect to:
  - (i) Albania that two exceptions to land ownership and privatisation were maintained. It was further noted that the Law on Privatisation Strategy adopted in 1998 substantially expanded the scope for foreign participation in privatisation of all Albanian companies, including in the energy sector, decreasing the share of the equity capital of companies to be privatised by vouchers reserved to nationals from 33% to 20%;
  - (ii) Azerbaijan that it introduced two new non-conforming measures resulting from adoption of new Laws on Securities and Tenders which, however, have not increased the level of non-conformity and may have only limited impact on Making Investment in the energy sector;
  - (iii) Estonia that no new non-conforming measures have been introduced and that it maintains only one exception concerning privatisation which gives the Government a possibility to restrict privatisation of certain enterprises to non-Estonian natural persons or legal persons where more than 50% of capital belongs to non-Estonian citizens;

- (iv) Latvia that no new non-conforming measures have been introduced and that it maintains only one exception with respect to land ownership which contains, except the nationality condition, a MFN element giving a preferential treatment to investors from countries with which Latvia ratified Agreements on promotion and protection of investment. It was noted that the MFN element is currently applicable only to Signatories which have not yet ratified the Energy Charter Treaty;
- (v) The former Yugoslav Republic of Macedonia that two out of the three pre-investment exceptions were phased out. It was further noted that the draft Law on Property includes provision for introducing reciprocity requirements for the acquisition of land and real estate. While the Law would constitute a commendable step in terms of liberalisation it would also introduce an exception to the MFN principle;
- (vi) the Russian Federation that in 1999 it notified a number of new and amended pre-investment exceptions. The new Foreign Investment Law, which entered into force on 9 July 1999, in principle represents a positive development and a substantial liberalisation of the investment conditions where national treatment is the legally stated standard. In respect of two of the notified measures the conclusions by the Investment Group were not unanimous.

## CONCLUDED

- a) in respect of The former Yugoslav Republic of Macedonia that the Government was invited to consider inclusion of the following provision in the draft Law on Property which might solve the reciprocity issue in relation to the Energy Charter Treaty:

*“The reciprocity requirement for the acquisition of land or real estate by foreign citizens shall not be applied to natural or legal persons engaged in any legal economic activity in the former Yugoslav Republic of Macedonia.”*

The Secretariat shall provide any assistance in solving this issue should this proposal be unacceptable to the Government of the former Yugoslav Republic of Macedonia;

- b) in respect of the Russian Federation that the next Investment Group would revert to the discussion of the two notified measures for which the conclusions made by the Investment Group have so far not been unanimous.