

**ENERGY CHARTER
SECRETARIAT**

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Related documents: CC 179, CC 185

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Investment Climate Reports

The Energy Charter Conference at its 6th Meeting held on 7 December 2000 *took note* of the completion by the Investment Group of the review of Investment Climate reports on Georgia, Kyrgyzstan and Lithuania, and of the outstanding non-conforming measures newly notified by the Russian Federation on which the March 2000 meeting of the Group could not reach unanimous conclusions.

In this connection, the Conference *adopted* the Conclusions attached at Annex.

Keywords: Investment Issues, Investment Climate, Exceptions, National Treatment, Georgia, Kyrgyzstan, Lithuania, Russian Federation

Conclusions with respect to Reports on Investment Climate Issues

as adopted by the Energy Charter Conference
at its 6th Meeting held on 7 December 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 Georgia, Kyrgyzstan and Lithuania, and to outstanding discussion on newly notified pre-investment non-conforming measures by the Russian Federation;

NOTED

- a) that the reviews have shown reasonable progress in the legislative framework, in particular by adopting a number of energy-related laws and regulations, enhanced transparency and further steps towards restructuring and privatisation of the energy sector in the reviewed countries;
- b) that the reviews have revealed a moderate positive development concerning the rollback of non-conforming measures in accordance with Article 10(5)(a) of the Treaty;
- c) in particular, with respect to:
 - (i) Georgia that it does not consider the prohibition of acquiring state-owned land by foreign natural persons as an obstacle for Making Investment in the Energy Sector and therefore does not maintain any exception to national treatment;
 - (ii) Kyrgyzstan that it has started with an ambitious project of unbundling the gas and electricity sectors as the first step to further liberalisation; that its legislation with respect to Making Investments in the Energy Sector, except concerning privatisation, applies on a non-discriminatory basis to both national and foreign investors;
 - (iii) Lithuania that further liberalisation of the land/real estate market allowed it to withdraw one non-conforming measure with respect to lease of land, but that the subsequently adopted Constitutional Law, following the amendment of the Constitution, introduced qualified MFN requirements giving a preferential treatment to investors from the EU, OECD or NATO countries;
 - (iv) the Russian Federation that, based on the conclusions of the Investment Group, it has withdrawn:
 - four exceptions with respect to Law on Foreign Investment which were deemed not to constitute an exception to national treatment so long as any exception enacted under that Law would be within the general exception provided for in Article 24 of the Treaty;
 - one exception with respect to Law on Tenders for Placing Orders to Deliver Goods, Perform Works and Render Services for State Purposes which was considered to be relevant to the Agreement on Government Procurement and which through Annex G (1)(b)(ii) of the Treaty (or Annex W(A)(1)(f)(ii) of the Trade Amendment) is not applicable within the context of the Treaty;
 - two exceptions with respect to Law on Production Sharing Agreements as amended and supplemented which were deemed not to constitute an exception

to national treatment since their provisions apply equally to both national and foreign investors.

INVITED

the Government of Lithuania to use its best efforts in compliance with the Energy Charter Treaty not to apply the qualified MFN requirement mentioned in c(iii) above for the acquisition of land to foreign natural or legal persons engaged in Economic Activity in the Energy Sector.