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Related documents: CC 204, CC 207

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Investment Climate Reports and Investment Climate and Market Restructuring Reports

[The Energy Charter Conference at its 9th Meeting held on 17 December 2001] ***approved*** the Conclusions contained in document CC 204 with regard to the Investment Climate reports on Cyprus and Malta and combined Investment Climate and Market Restructuring reports on Bulgaria, Kazakhstan and Uzbekistan.

The Conference also ***approved*** the conclusions with regard to the country reports previously undertaken by the Investment Group during 2001 on the Czech Republic, Estonia, Kyrgyzstan and Latvia.

The adopted conclusions are attached at Annex.

It had been agreed also that the combined report format will replace the previous system of separate reports on investment climate and market restructuring issues.]

Keywords: ICMS, Combined Report Format, Blue Book, Cyprus, Malta, Bulgaria, Kazakhstan, Uzbekistan, Czech Republic, Estonia, Kyrgyzstan, Latvia

Conclusions on the Reports on Investment Climate and Exceptions to National Treatment and Reports on Market Restructuring

as adopted by the Energy Charter Conference
at its 9th Meeting held on 17 December 2001

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 Cyprus (IC-12), the Czech Republic (IC-10), Estonia (IC-5), and Malta (IC-11);

Having heard the report from the Investment Group with respect to the Report on Market Restructuring from Kyrgyzstan (RIP-20) and Latvia (RIP-19);

Having heard the report from the Investment Group with respect to the combined Reports on Investment Climate and Market Structure from Bulgaria (ICMS-1), Kazakhstan (ICMS-2) and Uzbekistan (IC-8 REV/ICMS-4), and

Having welcomed the new approach of combined reports as a more appropriate and efficient basis for the country reviews;

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 positive development concerning the rollback of non-conforming measures in accordance with Article 10(5)(a) of the Treaty and concerning the clarification of the relevance of certain notified exceptions, resulting in the withdrawal of five exceptions from the “Blue Book” (Bulgaria [1], Czech Republic [1], Kazakhstan [3]).
- c) In particular, with respect to:

(i) Cyprus

- Took note of the overall favourable climate for foreign investment in Cyprus;
- Welcomed that all exchange control restrictions applicable to direct and portfolio investments in Cyprus under the Exchange Control Law, except banking, have been abolished for EU residents, and that, as a result, the corresponding Cypriot exception in the "Blue Book" could be narrowed in scope accordingly;
- Agreed that that the Cypriot exception concerning the acquisition of real estate by foreigners be modified in order to clarify that applications for acquisition of immovable property by foreign investors for the purpose of residence or for the purpose of professional or commercial premises, are usually granted.

(ii) Czech Republic

- Noted with satisfaction that the Czech Republic maintains a generally open investment regime for foreign investors with only a small number of exceptions to national treatment;
- Welcomed that the Czech authorities have withdrawn one non-conforming measure (licensing requirement for doing business in the energy sector), and that they intend amending legislation concerning the authorisation requirement for some activities in construction works so that the existing exception can be withdrawn in 2002;
- Noted that the existing cross-subsidies between the household and industry consumers of electricity will be eliminated during 2002, following the opening of the electricity market.

(iii) Estonia

- Noted with satisfaction that Estonia has an open investment regime and that it does not maintain any exceptions with regard to national treatment;
- Welcomed that the existing limitations for foreign residents concerning land acquisition in some geographical areas will be abolished in the nearest future;
- Noted that, following the gas sector, a strategy to privatise the electricity and oil sector is being elaborated, and invited the Estonian authorities to provide updated information on the qualified auctioning/privatisation of the Narva power plants.

(iv) Malta

- Noted with satisfaction that Malta has an open investment regime with only one pre-establishment exception to national treatment in the “Blue Book”;
- Noted that an additional discriminatory measure has been revealed during the review concerning the limitation for foreign investors to acquire more than one property in Malta, while acknowledging that this discrimination is of limited practical relevance; and agreed that the before-mentioned limitation should be properly reflected in an exception in the “Blue Book”;
- Expected the Maltese authorities to eliminate exchange controls in terms of the plan presented to the European Union in the context of Malta’s application for accession.
- Encouraged the Maltese authorities to introduce competition concerning energy prices, to consider the privatisation of the energy sector, and to develop the use of renewable energy sources.

(v) Kyrgyzstan

- Noted that the Kyrgyz Government is actively pursuing reforms to create favourable conditions for foreign and domestic investors, especially in priority industries;
- Noted that the Kyrgyz Government adopted a Programme for the Restructuring and Privatisation of Kyrgyzgaz J.S.C. and Kyrgyzenergo J.S.C., and encouraged the Kyrgyz authorities to implement this Programme without delay;
- Invited the Kyrgyz authorities to provide the Secretariat with the requested information necessary for the finalisation of the Report.

(vi) Latvia

- Noted the progress that had been made in Latvia concerning the restructuring and privatisation of the energy sector;
- Noted the issuance of a controlling stake of the shares of Latvijas Gaze to its main supplier, and its possible implications for the security or diversification of energy supply;
- Encouraged the Latvian authorities to put in place a legislative framework to ensure third party access in the gas sector by amendments to the Energy Law.

(vii) Bulgaria

- Noted with satisfaction that Bulgaria maintains a generally open and non-discriminatory investment regime for foreign investors with only a few preestablishment exceptions to national treatment;
- Welcomed the plans of the Bulgarian authorities for further improvements of the investment climate, in particular in the framework of privatisation and institutional restructuring, and encouraged the Bulgarian authorities to implement these measures without delay;
- Welcomed the announcement of the Bulgarian authorities to withdraw the existing exception concerning the acquisition by foreign investors of land in border areas, and expects that the exception on preferential treatment of Bulgarian citizens in privatisation matters will likewise be withdrawn once the new Privatisation Law has entered into force;
- Encouraged the Bulgarian authorities to consider plans for the restructuring of the gas sector, including the privatisation of Bulgargaz EAD, and to reconsider the existing “single buyer” model in the electricity market, preventing the creation of competition in this sector;
- Encouraged the Bulgarian authorities to continue their efforts to eliminate subsidies and fixed prices in the energy sector, and to introduce more market rules into the sector; and invited the Bulgarian authorities to consider the possibility of promoting a broader use of natural gas and renewable energies that are more environmentally friendly.

(viii) Kazakhstan

- Noted with satisfaction that Kazakhstan has a generally open investment climate, and, in particular, that the existing exception in the “Blue Book” concerning permanent land use could be withdrawn, while at the same time regretting that the withdrawal of this exception does not mean that foreign investors have obtained the right to permanent land use;
- Welcomed the announcement of the Kazakh authorities to withdraw two notified exceptions concerning the granting of advantages to domestic products and suppliers, as these measures do not discriminate against foreign investors. As a result, Kazakhstan will no longer maintain any exceptions in the “Blue Book”;
- Noted with concern that the current definition of “foreign investment” in the law on Foreign Investment is narrower than the definition in the Energy Charter Treaty, and invites the Kazakh authorities to make the necessary legislative changes in 2002;
- Encouraged the Kazakh authorities to proceed with the further privatisation of the electricity and gas sector, and to pursue steadily their programme for the creation of price competition in the electricity and gas sector.

(ix) Uzbekistan

- Noted with satisfaction that Uzbekistan has improved its investment climate since the previous round of the reviews in 1996 by establishing a number of laws aiming at improving investment protection;
- Encouraged the Uzbek authorities, through the newly established state regulatory agency “Uzgosenergonadzor”, to develop an appropriate regulatory framework to attract more investment and to enhance competition in the electricity sector;
- Requested the Uzbek authorities to provide supplementary information concerning the finalisation of the report by no later than end of January 2002.