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Related documents: CC 224, CC 233

DECISION OF THE ENERGY CHARTER CONFERENCE

**Subject: Recommendations on Investment Climate and Market Restructuring
Reports on Belarus, Bosnia & Herzegovina, Moldova and Poland**

[The Energy Charter Conference at its 11th Meeting held on 17-18 December 2002 approved the conclusions (Annex) circulated in document CC 224 with regard to the reports reviewed by the Investment Group on Investment Climate and Market Structure issues in the energy sectors of Belarus, Bosnia and Herzegovina, Moldova and Poland.]

Keywords: ICMS, Belarus, Bosnia & Herzegovina, Moldova, Poland

Conclusions with respect to Reports on Investment Climate and Market Structure Issues

as adopted by the Energy Charter Conference
at its 11th Meeting held on 17-18 December 2002

The Charter Conference,

Having heard the report from the Investment Group with respect to the Reports on Investment Climate and Market Structure from Belarus (ICMS-7), Bosnia-Herzegovina (ICMS-8), Moldova (ICMS-9) and Poland (ICMS-10)

NOTED

- a) That the reviews have shown some 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 some positive development concerning the rollback of non-conforming measures in accordance with Article 10 (5) of the Treaty and concerning the clarification of the relevance of certain notified exceptions, resulting in the announcement of the possible withdrawal of one or more exceptions (Belarus), and the modification of four exceptions in the “Blue Book” (Poland);
- c) That despite the “best endeavours” commitment in Article 10 (5) of the Treaty to progressively remove existing restrictions affecting investors of other contracting parties, new exceptions have been notified, thereby increasing the total number of exceptions maintained by all contracting parties (as of 27 November 2002);
- d) In particular, with respect to:
 - (i) *Belarus*
 - Welcomed the efforts of Belarus to begin opening energy markets for competition, and expressed its support for a more proactive stance regarding this issue in the future, and recommended to the Belarus authorities to consider opening more energy subsectors to competitive practices and simplifying and streamlining the required legal procedures for gaining access to these subsectors, such as licensing, registration, and direct limitations on non-government participation in the economic activities of particular energy sector branches.
 - Welcomed the announcement of the Belarus authorities that they will consider the withdrawal of one or more exceptions notified in the “Blue Book”;
 - Noted with regret that the Belarus authorities have notified three new exceptions relating to land ownership, investment in legal entities having a monopoly position, and procurement of goods and services by using budgetary and external state-loan money, and encouraged the Belarus authorities to look more actively

into possible ways and means to reduce the number of remaining exceptions and to enhance the attractiveness of its energy sector to investors in general, and foreign investors in particular. The existence of a considerable number of exceptions maintained by Belarus in the Blue Book is evidence that much more can be done to this end.

- Invited the Belarus authorities to ensure a sufficient degree of transparency, accountability and public awareness, particularly with the purpose of decreasing cross-subsidization, introducing better cost-reflectiveness of prices and tariffs, and assuring the provision of accurate information for decision making by investors, consumers and other stakeholders in the energy sector, as ways for improving both energy efficiency and the overall investment climate.
- Acknowledged the information submitted by the Belarus authorities regarding their role in important international cooperative energy sector projects, such as gas transit pipelines and power interconnections, and encouraged the Belarus authorities to continue their work towards achieving a better framework of operations in these areas of activity.

(ii) *Bosnia-Herzegovina*

- Noted with satisfaction the steady progress in the legislative framework of Bosnia and Herzegovina, in particular by adopting a number of investment-related laws and regulations, enhanced transparency and further steps towards restructuring and privatisation of the energy sector.
- Welcomed the overall favourable climate for foreign investment in Bosnia and Herzegovina in view that no exception is maintained in the Blue Book.
- Encouraged the authorities of Bosnia and Herzegovina to continue their efforts in inviting foreign direct investment necessary for the recovery of its economy from the damage incurred during the war.
- Appreciated that bilateral agreements on the promotion and protection of foreign direct investment have been concluded with all successor states of the former Socialist Federal Republic of Yugoslavia, providing national treatment and overriding the reciprocity clause in the Law on the Policy of Foreign Direct Investment.
- Welcomed the implementation of privatisation and restructuring measures in the electricity sector in line with the EU electricity directive.
- Reminded the authorities of Bosnia and Herzegovina to ensure full transparency for foreign investors in the ongoing privatisation and restructuring in the electricity sector, including possible future plans in this context.

(iii) *Moldova*

- Took note of the advanced stage of privatisation and restructuring in the Moldavian power sector, which is now open for domestic and foreign investors and operates on a market basis, and encouraged the Moldavian authorities to take

similar measures for bringing comprehensive market reform to other sectors, such as natural gas and petroleum products.

- Shared Moldova's concerns regarding security of energy supplies and the dependency on few sources of primary energy, and encouraged the Moldavian authorities to continue working with the international community to find ways to introduce some degree of diversification of energy supply, and to reduce the monopolistic features of some markets.
- Encouraged the Moldavian authorities to continue and accelerate their effort towards the introduction of transparent and economically feasible pricing and tariffs on energy products (particularly as one of the means for achieving greater energy efficiency), and also towards a more simple and transparent system of procedures for licensing and registration.
- Commended the Moldavian authorities on their significant efforts to assure transparency, accountability and public awareness throughout the energy sector, and invited them to take further action to this purpose;
- Recognized Moldova's effort to promote important regional energy projects in gas pipelines, power interconnections, and storage and distribution of petroleum products, and espoused the desire of Moldova to develop projects that support energy security and reduce investment risks.

(iv) Poland

- Took note with satisfaction of the overall favourable climate for foreign investment in Poland;
- Welcomed the liberalisation measures undertaken in the process of Poland's accession to the European Union, including those that benefit investors from all ECT member countries;
- Agreed that that the Polish exceptions concerning
 - The acquisition of real estate by foreigners;
 - The privatization of state enterprises;
 - Management of National Investment Funds, and
 - The granting of concessions for conducting economic activity in the fuel and energy business

be modified in order to reflect recent liberalisation measures, and to clarify the scope of existing exceptions.

- Encouraged the Polish authorities to continue the process of restructuring and privatisation of the energy sector, in particular
 - To accelerate the privatisation of the electric energy sector and to create an appropriate mechanism for the resolution of the issue of restructuring of long-term supply contracts between the Polish Power Grid Company and electricity producers;

- To continue their efforts to create an open market structure in the natural gas sector, and to restructure the Polish Oil and Gas Company (PGNiG), including its possible privatisation;
- To continue the restructuring process in the crude oil refining sector, including its privatisation;
- To continue and complete its program for the restructuring of the hard coal sector.