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Related documents: CC 337, CC 347

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Conclusions on the In-Depth Reports on Investment Climate and Market Structure (ICMS) of Belarus, Georgia and Kyrgyzstan

[The Energy Charter Conference at its 18th Meeting held on 7 December 2007 approved the conclusions proposed by the Investment Group with regard to the In-depth Reports on Belarus, Georgia and Kyrgyzstan, as contained in document CC 337 (*Annex*).]

Keywords: ICMS, Belarus, Georgia, Kyrgyzstan

Policy Conclusions to the In-Depth Report on the Investment Climate and Market Structure in the Energy Sector of the Republic of Belarus

as adopted by the Energy Charter Conference
at its 18th Meeting held on 7 December 2007

The Charter Conference,

Having regard to the Report from the Investment Group with respect to the In-depth Review on Investment Climate and Market Structure of the Republic of Belarus

NOTED

- a) That the Republic of Belarus considers foreign direct investment (FDI) as important to the country's economic development and prosperity and has established a comprehensive legal regime for FDI that is primarily based on the Investment Code of the Republic of Belarus, but also on certain other legal acts, which, however, contain features regarding FDI definition of “investment” which may differ from that of the Energy Charter Treaty; and
- b) That investment agreements as instruments of FDI are now available in the Republic of Belarus, on the premise that the terms and conditions of international treaties prevail in cases where they establish rules that are different from those of the legislation of Belarus,
- c) In particular:
 - Welcomed the steps taken by the Republic of Belarus to provide an establishment procedure, taxation, export and import control, currency control and other regulations that are essentially identical for businesses with and without foreign participation, but notes that laws are, as a rule, complemented by decrees, ordinances, rules and other normative acts that establish procedure and conditions of application, often introducing additional burden on investors and a considerable uncertainty that the procedure involves, and invites the Republic of Belarus to continue its effort towards streamlining procedures and regulations;
 - Noted that Belarus still maintains features of a planned economy, with the government controlling key factors of production and the decisions of economic agents, and that the tax burden is relatively high and government revenue is distributed to support certain companies and employment, as well as social programs, and welcomes the intention to gradually reduce direct government participation in the energy sector and strengthen the use and the scope of market-based approaches, thus boosting investor confidence by moving to a legal and regulatory basis more suitable for a competitive market structure in the energy sector;
 - Took note with concern that the energy sector continues to lack an independent regulator and is instead directly regulated by the government by various methods, including price control (particularly via ceiling prices or fixed prices) ranging from electricity and heat tariffs to refined petroleum to gas, putting enterprises on lists restricting privatization and competition including main pipelines and heat supply systems, maintaining minimum export price requirements for a number of products, and continuing subsidisation of many energy products including some important

export items, and appreciates the recent effort of the Republic of Belarus to start reducing the extent of this direct regulation by the government;

- Welcomed the establishment of public-private partnerships (PPPs) in the energy sector that have a good potential, such as the ones aiming at greater production of renewable energy sources (ethanol, MTBE);
- Appreciated that, to overcome obstacles for attracting FDI into the country, a new facility has been created by the government, whereby Belarus now hosts the Foreign Investment Advisory Council, which is headed by the Prime Minister of Belarus;
- Took note that regarding privatization in the energy sector the law vests in the State the exclusive ownership rights for a number of entities and types of assets, and, in some cases, types of activity, and encouraged the Belarus authorities to continue assessing the justification of the use, extent and implementation of such exclusivity lists regarding the fuel-and-energy complex;
- Took note of the importance of Belarus in bridging supply from the east and consumption in west in the energy sector, and in this respect acknowledged the role of the country as an energy corridor and a trading partner between the energy rich countries and the markets by referring to the projects already in service and the ones that are currently being developed, noting the importance of greater transparency and non-discrimination in such projects;
- Acknowledged that the Republic of Belarus is still developing solutions to the difficult task of striking a balance between liberalization, competition and supply security in the energy sector, and is looking at an acceptable supply-demand balance of energy, including by intensifying regional cooperation and improving energy efficiency policies and measures, and invited the Republic of Belarus to consider more actively the benefits of national, regional and international liberalised and competitive energy markets, as drivers for new investments while trying not to undermine supply security, and the benefits that full accession to the ECT could provide in this respect;
- Noted that demand-side measures regarding energy savings and efficiency should strongly be addressed in the energy policies, and welcomed the recent legislative efforts in this context;
- Welcomed the accession of the Republic of Belarus to the Kyoto Protocol and the inclusion in the fundamental objectives of the long-term energy policy of the country of such important priorities as stability of supply to the national economy and the population of gas, electricity and oil products, at prices and tariffs that ensure the competitiveness of the products of the economy both in the country and on foreign markets, and the increasing of the efficiency of the use of energy resources as a means for the reduction of energy-related costs.

Policy Conclusions to the In-Depth Report on the Investment Climate and Market Structure in the Energy Sector of the Republic of Georgia

as adopted by the Energy Charter Conference
at its 18th Meeting held on 7 December 2007

The Charter Conference,

Having regard to the Report from the Investment Group with respect to the In-depth Review on Investment Climate and Market Structure of Georgia

NOTED:

- a) That Georgia has recently gone through a vigorous reform program following the establishment of stability in the country and many steps have been taken towards a better investment climate in general with emphasis on the energy sector. In this respect, the government of Georgia has gone a long way towards liberalizing its economy and realizing institutional and structural reforms that led to a better investment climate for investors.
- b) The importance of Georgia as an energy corridor in the Caucasus region rich with energy resources and its role in presenting an invaluable option for the energy markets in the world, partly satisfying concerns over energy security via diversification of sources.
- c) The importance of greater transparency and non-discrimination in this respect pursuant to the ECT, further noted the significant role of existing transit pipelines in hailing geo-strategic importance of Georgia in the region as well as a sign of investor confidence due to their multiplying effect on other potential investors.
- d) In particular:
 - Welcomed the achievement of the reform programs in Georgia in the energy sector which is intended to be coherent with the EU's *aquis communautaire* regarding restructuring and liberalisation;
 - Appreciated that Georgia has embarked on a vigorous reform agenda in the recent years and has been successful to achieve many of the targets. Welcomed the liberalization of the economy and restructuring of the institutional system bearing fruit in increased FDI, integration with the world economy, and modernized economic structure in many of the sub-sectors. Highlighted that increased competitiveness resulted in increased exports, while higher FDI figures are to bring into the country know-how and modern technology;
 - Took note with satisfaction that important milestones have been covered in the energy sector towards a regulatory system that envisages the private sector running energy sector activities ranging from production to distribution, which foresees less political interference and more transparency, yet addressing the vitality of preserving the regulatory structure for the envisaged liberal market system to work effectively and give confidence to entrepreneurs for required investments towards a competitive energy market;
 - Appreciated the steps taken for a more efficient and less burdensome bureaucracy that curbed the red-tape, and furthermore commended introduction of the one-window system for entrepreneurs, namely the Georgian National Investment

Agency (GNIA) that provides services to entrepreneurs at no cost; but also advised the authorities to boost further the reforms in strengthening the judiciary for a more reliable justice system and effective implementation of the existing legislation, while employing a balanced approach for sustainability as a developing country with income inequalities;

- Noted with satisfaction the policy approach in the oil sector, and also the ambitious restructuring and privatisation program pursued in the electricity sector, and that the gas sector is governed by a liberal law envisaging principles of market economy; and highlighted the similar approach in the coal sector with expected private sector involvement which would help ensuring the maximization of using indigenous sources;
- Acknowledged that, in the energy sector Georgia is going through the liberalization, privatization and competition-regulation process simultaneously, and thus drew attention in this respect to the difficulty of preserving a balance between competitiveness and supply security;
- Commended that the liberal approach in energy sector is noteworthy especially in a relatively small country, but considered that implementation should be carefully administered so that the theory matches the practice to create confidence in the market, which is vitally important for attracting future private investments, and that deviation from or inconsistent moves with what is already mentioned in the policies or through implementation may create uncertainty as to future policy and performance of the energy sector;
- Noted with satisfaction that Georgia has developed a Renewable Energy Development Program to exploit the good potential for renewable energy sources which improve the level of security of supply while reducing CO₂ emissions;
- Appraised the establishment of the Energy Efficiency Centre and referred to the need to take further steps for promoting energy efficiency within the market-oriented framework, including institutional build-up of capacity on the public side.

Policy Conclusions to the In-depth Report on the Investment Climate and Market Structure in the Energy Sector of the Kyrgyz Republic

as adopted by the Energy Charter Conference
at its 18th Meeting held on 7 December 2007

The Charter Conference,

Having regard to the Report from the Investment Group with respect to the In-depth Review on Investment Climate and Market Structure of the Kyrgyz Republic

NOTED

- a) That the Kyrgyz Republic Kyrgyzstan acceded to the World Trade Organization (WTO) on 20 December 1998 and has been pursuing market-based reforms, privatization of state-owned enterprises and promotion of foreign direct investment (FDI) to support economic development;
- b) That the government has taken steps to improve the legal, regulatory and institutional frameworks for investment in the country;
- c) That the government has adopted a freely convertible currency regime and there are no foreign exchange controls;
- d) That foreign investors are entitled to the same treatment as local investors, and even though ownership of land by foreign investors is restricted, land can be leased on a long term basis;
- e) That the terms and conditions of international treaties prevail in cases where they establish rules that are different from those of the laws of Kyrgyzstan;
- f) In particular:
 - Welcomed the steps taken by the Kyrgyz Republic to provide an establishment procedure regarding regulations on taxation, export and import control, currency and other issues that are essentially identical for businesses with and without foreign participation, but notes that laws are yet often poorly implemented in a judicial system and that investors cite difficulties relating to the effectiveness of the legal system as a major constraint;
 - Welcomes the effort to gradually strengthen the use and the scope of market-based approaches in the energy sector, thus boosting investor confidence, but notes that the reform process remains incomplete, with relative prices of non-tradable goods (particularly utilities) suppressed, hampering the gradual transformation of these sectors into profitable entities which generate savings and attract investments, distorting market signals and resulting in resource misallocation, thereby hampering efficiency and diversification of the economy;
 - Took note that the energy sector is directly regulated by the government, including by price (tariff) regulation, putting companies on lists restricting privatization and (de-facto) competition including existing electricity generation plants and high-voltage grids, and cross-subsidization of many energy products still exists, and appreciates the recent effort of the Kyrgyz Republic to start reducing the extent of this direct government regulation by offering, albeit to a limited extent, opportunities in electricity generation to private investors and adopting a program for gradual phase-out of cross-subsidization;

- Welcomed the establishment and the constructive participation of the Kyrgyz Republic in greater regional cooperation in the energy sector that has a good potential to boost the production of renewable energy sources (hydroelectricity);
- Appreciated that, to alleviate obstacles in attracting FDI into the country, the government has established an Investment Promotion Centre (IPC) as a one-stop shop to assist foreign investors in investing in the country, and a Consultative Council on Foreign Investment chaired by the President and comprising business representatives, as a platform for investors and the government to exchange views and discuss policy implementation and related measures in improving the investment climate of the country;
- Appreciated the effort of the Government to build up an institutional framework in all areas of governance, but notes that despite the ongoing reform results so far have not been very satisfactory and red tape, corruption and inefficiencies in the public management circles are still prominent;
- Took note of the potential role of Kyrgyzstan as one of the mainstays in bridging electricity supply and demand in the region and the wider area, and in this respect acknowledged the role of the country as supplying partner to other countries, by referring to the hydroelectricity generation projects already in service and the ones that are currently being developed, noting the importance of greater transparency and non-discrimination in electricity sector projects, but also in the oil and gas industry of the country, where concerns about granted exclusivity may deter future investors;
- Acknowledged that the Kyrgyz Republic is still developing solutions to the difficult task of striking a balance between liberalization, competition and supply security in the energy sector, and is looking at an acceptable supply-demand balance of energy, including by intensifying regional cooperation, and invited the Kyrgyz Republic to consider more actively the benefits of national, regional and international competitive energy markets, as drivers for new investments while trying not to undermine supply security;
- Noted that there are good short term prospects for better use of coal reserves that could help improve energy security, but safety, technical standards, and environmental concerns continue to be largely uncontrolled, and the issue of finding a balance between private sector involvement and reliance on the public sector activity in the coal industry needs to be addressed;
- Noted that demand-side measures regarding energy savings and efficiency should strongly be addressed in the energy policies, and welcomed the recent efforts in this context;
- Appreciated the intent and the effort of the Government to manage the passage of the country through a long and difficult transition period, struggling to establish a stable and fully functioning democratic regime on market principles, and notes that there are recent encouraging developments towards achieving better governance and stability in the country, which would further encourage investor confidence, but notes the obvious need for expediting the process of implementing the reform programs and encourages the Government to take more decisive actions.