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Energy Charter Secretariat

FINAL ACT

OF THE ENERGY CHARTER CONFERENCE

WITH RESPECT TO THE

ENERGY CHARTER PROTOCOL

ON TRANSIT

31st October 2003

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Final Act of the Energy Charter Conference

- I. The meeting of the Energy Charter Conference was held at Brussels on 10 December 2003. Representatives of the Republic of Albania, the Republic of Armenia, Australia, the Republic of Austria, the Azerbaijani Republic, the Kingdom of Belgium, the Republic of Belarus, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the European Communities, the Republic of Finland, the French Republic, Georgia, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, the Republic of Iceland, Ireland, the Italian Republic, Japan, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Former Yugoslav Republic of Macedonia, the Republic of Malta, the Republic of Moldova, Mongolia, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the Republic of Tajikistan, the Republic of Turkey, Turkmenistan, Ukraine, the United Kingdom of Great Britain and Northern Ireland, and the Republic of Uzbekistan (hereinafter referred to as "the representatives") participated in the Charter Conference, as did invited observers.

Background

- II. In March 1998, Ministers of Foreign Affairs of Azerbaijan, Georgia, Kazakhstan, Turkey, Turkmenistan and Uzbekistan highlighted the necessity to create a commercially attractive environment for investments in oil and natural gas pipeline projects, by addressing the political considerations and the technical, financial, commercial and legal issues for the realisation of such pipelines. It was pointed out that such an approach is important for both the countries involved in these projects and the private companies intending to invest in them.

The G8 Energy Ministerial Meeting in Moscow on April 1, 1998 acknowledged that governments must play a role in creating an appropriate framework of conditions favouring the mobilisation of private capital for energy investment. In this regard, it was noted that the transit provisions set forth in the Energy Charter Treaty provide an important element in the creation of effective framework for the development of such conditions.

A Transit Working Group was established by the Energy Charter Conference at its meeting of 23 April 1998 with a view to pursuing further the work on transit issues.

The G8 Summit in Birmingham on May 17, 1998 recognised the importance of soundly based political and economic stability in the regions of energy production and transit and the importance of international co-operation towards the development of commercially viable international energy transmission

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networks. It was agreed to pursue this co-operation bilaterally and multilaterally, including within the framework and principles of the Energy Charter Treaty.

At its meeting on 7 December 1999, the Energy Charter Conference authorised the Transit Working Group to commence negotiations of an Energy Charter Protocol on Transit.

Negotiations were successfully completed in xxxx.

THE ENERGY CHARTER PROTOCOL ON TRANSIT

- III. The Energy Charter Conference has adopted the text of the Energy Charter Protocol on Transit (hereinafter the "Protocol") which is set out in Annex 1 and the Decision with respect thereto which is set out in Annex 2, and has agreed that the Protocol would be open for signature at Brussels from xxxx to yyyy, in accordance with its provisions.

UNDERSTANDINGS

- IV. By signing the Final Act, the representatives agreed to adopt the following Understandings with respect to the Protocol:

1. *With respect to the Protocol as a whole*

It is understood that nothing in this Protocol shall derogate from a Contracting Party's rights and obligations under international law, including customary international law, existing bilateral or multilateral agreements, including rules concerning submarine cables and pipelines.

Furthermore, it is understood that the provisions of this Protocol are subject to the conventional rules of international law. The provisions are not intended to affect the interpretation of existing international law on jurisdiction over submarine cables and pipelines or, where there are no such rules, to general international law.

For the purposes of this Protocol and without prejudice to any rights or obligations of the coastal state under international law, whenever an article is applied to the Area beyond the outer limits of the territorial seas, the term Contracting Party is understood to be the Contracting Party exercising jurisdiction over the owner or operator of the Energy Transport Facilities.

2. *With respect to the Protocol as a whole*

For the avoidance of doubt, this Protocol shall be in accordance with Article 6 of the Treaty.

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3. With respect to Article 1(2)

It is understood that the definition of Available Capacity applies only in the context of this Protocol and shall not constitute a precedent in the use of this or similar concepts in other contexts.

4. With respect to Article 1(2)

It is understood that, for the purposes of this Protocol, "other fixed facilities" referred to in Article 7(10)(b) of the Treaty include specific installations designed to increase throughput capacity and stability of network oscillatory processes (e.g. devices to compensate for capacity currents and reactive power, direct current bridges or safety automatic devices).

5. With respect to Article 1(2)(d)

It is understood that, in the case of electricity, the term "operating margin" shall include, but not be limited to, electricity loop flows that result from electricity flows across different networks, possible reverse flows and a reserve for seasonal atmospheric factors.

6. With respect to Articles 2 and 10

An undertaking is considered to be in a dominant position in a given market when it is able to act independently of its competitors. Abuse of a dominant position is where such position is used to impose unfair or discriminatory conditions on those using the Energy Transport Facilities, for example by directly or indirectly imposing unfair Transit Tariffs or other conditions, or by unfairly restricting access to Available Capacity for Transit.

7. With respect to Article 4

For the purposes of this Protocol, it is understood that notwithstanding Article 7(10)(b) of the Treaty, the expression "Energy Transport Facilities used for Transit" excludes "other fixed facilities" to the extent that such facilities are not necessary to secure the flow of Energy Materials and Products in Transit through high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines and oil product pipelines.

8. With respect to Article 8(1) and Article 9(3)

It is understood that Article 8(1) and Article 9(3) are without prejudice to synchronous interconnection between grids presently interconnected through back-to-back Direct Current converters.

9. With respect to Article 8(2)

In case of an incompatibility of technical specifications, including quality specifications of Energy Materials and Products, which cannot be reasonably

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overcome, the owner or operator of Energy Transport Facilities used for Transit may refuse both access to and use of Available Capacity.

10. With respect to Article 10

The conditions provided for in Article 10 apply to access and use of Available Capacity as defined in Article 1 of this Protocol.

11. With respect to Article 10(4)

For the avoidance of doubt, the congestion management mechanisms include auctions. It is further understood that, if auctions are used, the Transit Tariffs determined by such auctions shall also be cost-effective.

12. With respect to Article 14(1)

It is understood that the obligation laid down in Article 14(1) shall apply when metering and measuring equipment is installed in the vicinity of the international border at a convenient place mutually agreed by the owner or operator of Energy Transport Facilities used for Transit and the Contracting Parties or Entities of other Contracting Parties using such facilities.

13. With respect to Article 15

It is understood that the term “control”, as used in Article 15 of this Protocol, has the same meaning as in the Understanding with respect to Article 1(6) of the Treaty.

14. With respect to Article 21

It is understood that, unless the parties to a dispute decide otherwise, the provisions in Article 21 will not be applied to a dispute concerning Energy Transport Facilities beyond the outer limits of the territorial seas if other dispute settlement procedures covering the subject matter of the dispute are applicable under other bilateral or multilateral agreements.

JOINT DECLARATIONS

V. By signing the Final Act, the representatives agreed to adopt the following Joint Declarations with respect to the Protocol:

1. With respect to Article 12

In order to eliminate technical barriers to Transit, the Charter Conference may examine measures relating to differences in quality of Energy Materials and Products of different origins being transported by Energy Transport Facilities used for Transit.

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DECLARATIONS

VI. The representatives noted the following Declarations that were made with respect to the Transit Protocol:

1. With respect to Article 10

The European Communities and their Member States declare that they shall interpret the term “transparent” in light of the transparency requirements of European Community law, and in particular, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning the common rules for the internal market in electricity and Directive 98/30/EC of the European Parliament and of the Council of 12 February 1998 concerning common rules for the internal market in natural gas.

2. With respect to Article 20

The European Community and its Members States:

The European Community and its Member States recall, pursuant to the Treaty establishing the European Community, Part Three (“Community Policies”), Title I (“Free Movement of Goods”), the principles of the free movement of goods within the European Community and of non-discrimination in treatment between like products of Community origin and those in free circulation originating from outside the Community;

The European Community and its Member States also recall, pursuant to the Treaty establishing the European Community, Part Three, Title VI, Chapter 1, (“Rules on Competition”), the principle of competitive markets within the European Community and in particular the prohibition of the abuse of dominant positions;

The European Community and its Member States further recall, pursuant to the Directives¹ currently in force concerning common rules for the internal markets in natural gas and electricity and on the transit of natural gas and electricity, that access to the natural gas and electricity systems in conformity with these Directives shall be based on objective, transparent, non-discriminatory and fair criteria;

The European Community and its Member States also recall that the European Community and its Member States, as Contracting Parties, are bound by the

¹

- i) Council Directive (90/547/EEC) of 29 October 1990 on the transit of electricity through transmission grids;
- ii) Council Directive (91/296/EEC) of 31 May 1991 on the transit of natural gas through grids;
- iii) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity;
- iv) Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas.

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provisions of the Energy Charter Treaty and associated instruments². The legislation of the European Community and its Member States, including future legislative provisions, must be compatible with these instruments as well as with the Treaty establishing the European Community, all of which instruments are based on the principles of non-discrimination and open and competitive markets."

DOCUMENTATION

The records of negotiations of the Protocol will be deposited with the Secretariat.

IN WITNESS WHEREOF the representatives have signed this Final Act. Done at [Brussels] on [xx] in the year [yyyy].

By unanimous decision of the Charter Conference, the original of this Final Act shall be deposited in the archives of the Portuguese Republic.

² The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects and the Amendment to the Trade-Related Provisions of the Energy Charter.

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Annex 1 to the Final Act



ENERGY CHARTER PROTOCOL ON TRANSIT

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PREAMBLE

The Contracting Parties to this Protocol,

Having regard to the European Energy Charter adopted in the Concluding Document of The Hague Conference on the European Energy Charter, signed at The Hague on 17 December 1991;

Being Contracting Parties to the Energy Charter Treaty adopted in the Final Act of the European Energy Charter Conference, signed in Lisbon on 17 December 1994 (hereinafter referred to as the "Treaty");

In pursuit of the ultimate purpose of the Treaty as stated in its Article 2;

Recalling the provisions of the Treaty, notably Article 7 establishing the principle of freedom of Transit;

Recognising the basic principles in international law establishing the freedoms of the high seas including the freedom to lay submarine cables and pipelines.

Noting Contracting Parties' rights and obligations pursuant to Articles 4 and 29 of the Treaty;

Acknowledging the importance of open energy markets, access to Energy Transport Facilities, as well as security of energy supply;

Wishing to strengthen further a clear and coherent set of international rules and principles promoting secure, efficient, uninterrupted and unimpeded Transit and International Energy Swap Agreements, as a means of promoting the economic growth and security of energy supply of all Contracting Parties;

Desiring to further liberalise the existing regimes of the Contracting Parties relating to Transit;

Wishing to develop further stable, equitable, favourable, objective, non-discriminatory and transparent market conditions for Transit;

Aiming to avoid Transit being impeded by any territorial disputes between or among Contracting Parties, which, as such, shall not be addressed by this Protocol;

Reaffirming their commitment to secure established flows and not to interrupt or reduce the existing flow of Energy Materials and Products in Transit;

Desiring to prevent unauthorised taking of Energy Materials and Products in Transit;

Acknowledging the existence of certain obstacles of a technical and non-technical nature to secure, efficient, uninterrupted and unimpeded Transit;

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Recognising the need to ensure environmentally sound Transit of Energy Materials and Products in order to minimise and remedy damage to the environment;

Reaffirming the importance of protecting human, animal or plant life or health, and the maintenance of public order; and

Recalling that pursuant to Understanding 1(b) of the Treaty, the provisions of the Treaty and this Protocol do not oblige any Contracting Party to introduce mandatory third party access;

HAVE AGREED as follows:

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PART I

DEFINITIONS, OBJECTIVES AND SCOPE

ARTICLE 1

DEFINITIONS

For the purposes of this Protocol, the definitions contained in the Treaty, and in particular those contained in Articles 1, 7 and 19, shall apply.

As used in this Protocol:

1. "Contracting Party" means a state or Regional Economic Integration Organisation which has consented to be bound by this Protocol and for which this Protocol is in force.
2. "Available Capacity" means the total physical operating capacity of the Energy Transport Facilities, less the physical operating capacity:
 - (a) necessary for the fulfilment of obligations by the owner or operator of the Energy Transport Facilities under any valid and legally binding agreements relating to the transportation of Energy Materials and Products;
 - (b) necessary for the fulfilment of any other binding obligations pursuant to laws and regulations to the extent those laws and regulations are intended to ensure the supply of Energy Materials and Products within the territory of a Contracting Party;
 - (c) regarding hydrocarbons, necessary to account for the reasonable requirements, including forecasted requirements, for the transportation of Energy Materials and Products which are owned by the owners or operators of the Energy Transport Facilities or their Affiliates¹; and
 - (d) necessary for the efficient operation of the Energy Transport Facilities, including any operating margin necessary to ensure the security and reliability of the system.
3. "Entity" means:
 - (a) with respect to a Contracting Party:

¹ "Affiliate" means:

- any parent company, parent business enterprise or other parent organisation which owns directly or indirectly 100% of the shares of an owner or operator of Energy Transport Facilities; or
- any other company, business enterprise or other organisation of which such parent company, parent business enterprise or other parent organisation or such owner or operator owns directly or indirectly 100% of the shares.

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- (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law;
 - (ii) a company or other organisation organised in accordance with the law applicable in that Contracting Party.
 - (b) with respect to a "third state", a natural person, company or other organisation which fulfils, *mutatis mutandis*, the conditions specified in subparagraph (a) for a Contracting Party.
4. "Internationally Accepted Accounting Standards" means the standards which are accepted by a recognised consensus of, or have substantial authoritative support from, international accounting standard bodies with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.
5. "Transit Agreement" means any agreement relating to Transit and which is entered into between:
- (a) a Contracting Party and an Entity of another Contracting Party; or
 - (b) an Entity of a Contracting Party and an Entity of another Contracting Party.
6. "Transit Tariffs" means the payments required by the owner or operator of the Energy Transport Facilities for the Transit of Energy Materials and Products.

ARTICLE 2

OBJECTIVES

1. The objectives of this Protocol are:
- (a) to ensure secure, efficient, uninterrupted and unimpeded Transit for the benefit of all Contracting Parties concerned;
 - (b) to promote transparent and non-discriminatory access to and use of Available Capacity in present and future Energy Transport Facilities used for Transit;
 - (c) to facilitate efficient use of Energy Transport Facilities used for Transit;
 - (d) to facilitate the construction, expansion, extension, reconstruction, and operation of Energy Transport Facilities used for Transit;
 - (e) to minimise harmful Environmental Impacts of Transit;
 - (f) to promote the prompt and effective settlement of disputes relating to Transit.

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2. Contracting Parties shall ensure that, in pursuing these objectives, the provisions of this Protocol shall apply in a fair and non-discriminatory manner, consistent with the provisions of the Treaty, in particular Articles 2, 3, 6 and 7 thereof, and shall include the prohibition of the abuse of a dominant position.

ARTICLE 3

THE RELATIONSHIP BETWEEN THE PROTOCOL AND THE TREATY

1. Nothing in this Protocol shall derogate from the provisions of the Treaty.
2. The provisions of this Protocol shall complement, supplement, extend or amplify the provisions of the Treaty.
3. The provisions of the Treaty pertaining to its Article 7 shall apply in accordance with this Protocol.

ARTICLE 4

SCOPE

1. Unless otherwise provided for in this Protocol, it shall apply to Energy Materials and Products in Transit through Energy Transport Facilities in the Area of a Contracting Party, Energy Transport Facilities used for such Transit and to International Energy Swap Agreements.
2. The provisions of this Protocol relating to access to Available Capacity shall apply for Transit purposes only; access to Available Capacity for purposes other than Transit is outside the scope of this Protocol.
3. Nothing in this Protocol affects the right of a Contracting Party to receive fair and reasonable benefits for facilitating the construction, expansion, extension and reconstruction of Energy Transport Facilities used for Transit within its territory. Contracting Parties reaffirm that that right must be exercised in accordance with and subject to the principles of international law.

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PART II

GENERAL PROVISIONS

ARTICLE 5

TRANSIT AGREEMENTS

1. Each Contracting Party shall observe all obligations resulting from Transit Agreements it has entered into with Entities of other Contracting Parties.
2. No Transit Agreement concluded prior to the entry into force of this Protocol shall be challenged as being in violation of any provision of the Protocol.
3. Each Contracting Party shall ensure that its domestic law provides effective and non-discriminatory means for the assertion of claims and the enforcement of rights with respect to Transit Agreements.

ARTICLE 6

**PROHIBITION OF UNAUTHORISED TAKING
OF ENERGY MATERIALS AND PRODUCTS IN TRANSIT**

1. A Contracting Party, through whose territory Energy Materials and Products transit shall not take from, or interfere with, the flow of Energy Materials and Products in any manner inconsistent with the provisions of the Treaty or this Protocol, taking into account whether such taking or interference is specifically provided for in a contract.
2. A Contracting Party through whose territory Energy Materials and Products transit shall take all necessary measures to prohibit and address the unauthorised taking of such Energy Materials and Products in Transit by any Entity subject to that Contracting Party's control or jurisdiction.

ARTICLE 7

PROTECTION OF THE ENVIRONMENT

1. Contracting Parties shall take appropriate measures to ensure that Energy Transport Facilities are constructed, expanded, extended, re-constructed, operated, and maintained so as to minimise, in a Cost-Effective manner, harmful Environmental Impact.
2. Contracting Parties shall ensure that their domestic laws provide for an effective and non-discriminatory liability regime to remedy damage caused by Energy Materials and Products in Transit and Energy Transport Facilities used for Transit.

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PART III

SPECIFIC PROVISIONS

ARTICLE 8

UTILISATION OF AVAILABLE CAPACITY

1. Each Contracting Party shall ensure that owners or operators of Energy Transport Facilities under its jurisdiction will negotiate in good faith with any other Contracting Parties or Entities of Contracting Parties requesting access to and use of Available Capacity for Transit. Such negotiations shall be based on transparent procedures, on commercial terms, and be non-discriminatory as to the origin, destination or ownership of the Energy Materials and Products.
2. Contracting Parties shall ensure that owners or operators shall be obliged to provide a duly substantiated explanation in case of refusing access to and use of Available Capacity for Transit.
3. Each Contracting Party has the right to deny the advantages of this Article to any Entity of Contracting Parties, if the denying Contracting Party establishes that such Entity of a Contracting Party is owned or controlled directly or indirectly by an Entity of a third state in respect of which the denying Contracting Party:
 - (a) does not maintain a diplomatic relationship; or
 - (b) adopts or maintains measures that:
 - (i) prohibit transactions with Entities of that state; or
 - (ii) would be violated or circumvented if the benefits of this Article were accorded to Entities of that state.
4. Notwithstanding Article 8(1), where the duration of a Transit Agreement relating to Transit of hydrocarbons does not match the duration of a supply contract, the Contracting Party through whose Area the hydrocarbons transit shall ensure that the owners or operators of Energy Transport Facilities under its jurisdiction who are in negotiations on access to Available Capacity consider in good faith and under competitive conditions the renewal of such Transit Agreements. This means that the existing user upon the expiry of the Transit Agreement shall be treated neither better nor worse than other potential users at that time, except that the existing user shall be given the first opportunity to accept the conditions offered for any new Transit Agreement for that Available Capacity.

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ARTICLE 9

CONSTRUCTION, EXPANSION, EXTENSION, RECONSTRUCTION AND OPERATION OF ENERGY TRANSPORT FACILITIES USED FOR TRANSIT

1. Contracting Parties shall have in place authorisation procedures or legislation concerning the construction, expansion, extension, re-construction, and operation of Energy Transport Facilities used for Transit within its territory.
2. Without prejudice to Article 10 of the Treaty, the Contracting Parties undertake that:
 - (a) the authorisation procedures or legislation referred to in paragraph 1 shall be objective, transparent and non-discriminatory as to the origin, destination and ownership of the Energy Materials and Products; and
 - (b) measures relating to the construction, expansion, extension and reconstruction referred to in paragraph 1 shall be no less favourable than measures relating to the construction, expansion, extension and reconstruction of Energy Transport Facilities used for internal transportation of Energy Materials and Products in the territory of that Contracting Party.
3.
 - (a) When a Contracting Party or its Entity submits an application for permission to construct, expand, extend, reconstruct or operate Energy Transport Facilities used for Transit in the territory of another Contracting Party, the latter shall reply in writing within a reasonable time and shall ensure that its decision is fair, transparent, based on objective considerations, and does not discriminate on grounds of ownership, origin or destination of the Energy Materials and Products.
 - (b) The applicant Contracting Party may request the Secretary General to communicate the decision of the replying Contracting Party referred to in subparagraph (a) to other Contracting Parties or Entities of other Contracting Parties, as may be concerned.

ARTICLE 10

TRANSIT TARIFFS

1. Each Contracting Party shall take all necessary measures to ensure that Transit Tariffs and other conditions are objective, reasonable, transparent and do not discriminate on the basis of origin, destination or ownership of Energy Materials and Products in Transit.
2. Each Contracting Party shall ensure that Transit Tariffs and other conditions are not affected by market distortions, in particular those resulting from abuse of a dominant position by any owner or operator of Energy Transport Facilities used for Transit.

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3. Transit Tariffs shall be based on operational and investment costs, including a reasonable rate of return.
4. Subject to paragraphs 1, 2 and 3 of this Article, Transit Tariffs may be determined by appropriate means, including regulation, commercial negotiations or congestion management mechanisms.

ARTICLE 11

CHARGES

Any charges imposed by a Contracting Party on Transit of Energy Materials and Products within its territory shall fully comply with Article V of GATT 1994.

ARTICLE 12

TECHNICAL AND OTHER RELEVANT STANDARDS

Contracting Parties shall use their best endeavours to agree on generally accepted international technical standards for the construction, expansion, extension, reconstruction, operation and maintenance of Energy Transport Facilities used for Transit, including relevant standards concerning the environment, health, safety and social aspects of such activities, and subsequently use such standards as the basis for their national regulations.

ARTICLE 13

ACCOUNTING STANDARDS

1. Each Contracting Party shall either implement national accounting standards, or refer to Internationally Accepted Accounting Standards and shall apply such standards to the accounting of the financial performance of Energy Transport Facilities where the use of these facilities includes Transit.
2. Each Contracting Party shall require the owners or operators of such facilities to comply fully and properly with such accounting standards.
3. Each Contracting Party shall use its best endeavours to implement Internationally Accepted Accounting Standards as its national accounting standards at least with regard to consolidated accounts.

ARTICLE 14

METERING AND MEASURING

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1. Each Contracting Party shall ensure that the owners or operators of Energy Transport Facilities used for Transit within its territory have the quantity and the quality of Energy Materials and Products crossing international borders metered and measured by appropriate metering and measuring equipment.
2. Each Contracting Party shall encourage that the terms of access to metering and measuring equipment and their readings are agreed between the owners or operators of Energy Transport Facilities and the Contracting Parties or Entities of other Contracting Parties using such Energy Transport Facilities for Transit within its territory.
3. Contracting Parties shall use their best endeavours to agree on regular calibration of the metering and measuring equipment referred to above and shall regularly consult with each other concerning the implementation of this Article.

ARTICLE 15

SUPPLY OF ENERGY MATERIALS AND PRODUCTS

1. Each Contracting Party shall ensure that no owner of Energy Materials and Products in Transit under its control refuse to negotiate in good faith, on the basis of transparent and non-discriminatory procedures and on commercial terms, to supply Energy Materials and Products to the Contracting Party through whose territory such Transit occurs.
2. Failure of such negotiations shall not be a reason for refusing Transit, reducing Transit volumes, or refusing to negotiate access to and use of Available Capacity used for Transit in accordance with Article 8(1).

ARTICLE 16

ACCIDENTAL INTERRUPTION, REDUCTION OR STOPPAGE OF TRANSIT

1. Each Contracting Party shall ensure that owners and operators of Energy Transport Facilities used for Transit take necessary measures:
 - (a) to minimise the risk of accidental interruption, reduction or stoppage of Transit;
 - (b) to expeditiously restore the normal operation of such Transit which has been accidentally interrupted, reduced or stopped.
2. Contracting Parties shall immediately notify any other Contracting Party concerned of accidental interruption, reduction or stoppage of Transit and the cause thereof; they shall also provide a realistic assessment as to when Transit can be resumed.

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PART IV

INTERNATIONAL ENERGY SWAP AGREEMENTS

ARTICLE 17

INTERNATIONAL ENERGY SWAP AGREEMENTS

1. “International Energy Swap Agreement” means any agreement relating to the exchange of a quantity of energy in the territory of one Contracting Party for an equivalent quantity of energy of the same type in the territory of another Contracting Party and which is entered into between:
 - (a) a Contracting Party and an Entity of another Contracting Party; or
 - (b) an Entity of a Contracting Party and an Entity of another Contracting Party.
2. Contracting Parties shall not place obstacles to the conclusion or execution of International Energy Swap Agreements, except as may be otherwise provided in applicable legislation.
3. Each Contracting Party shall observe all obligations resulting from International Energy Swap Agreements it has entered into with Entities of other Contracting Parties.
4. Each Contracting Party shall ensure that its domestic law provides effective and non-discriminatory means for the assertion of claims and the enforcement of rights with respect to International Energy Swap Agreements.
5. A Contracting Party shall not take, or interfere with, Energy Materials and Products exchanged under International Energy Swap Agreements in any manner inconsistent with the provisions of the Treaty or this Protocol, taking into account whether such taking or interference is specifically permitted in a contract.
6. A Contracting Party in whose territory Energy Materials and Products are exchanged under International Energy Swap Agreements shall take all necessary measures to prohibit and address the unauthorised taking of such Energy Materials and Products by any Entity subject to that Contracting Party’s control or jurisdiction.

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PART V

IMPLEMENTATION AND COMPLIANCE

ARTICLE 18

IMPLEMENTATION AND COMPLIANCE

1. Each Contracting Party shall ensure that all relevant legislative, regulatory and administrative provisions in connection with Transit are administered in a reasonable, objective and impartial manner.
2. Each Contracting Party shall respond promptly to requests by any other Contracting Party for specific information on its legislative, regulatory and administrative provisions or bilateral or multilateral agreements, which pertain to or affect the implementation of this Protocol.
3. Each Contracting Party shall submit to the Secretariat within reasonable time a report summarising all laws, regulations and other measures of judicial or institutional nature, relating to the implementation of this Protocol.
4. A Contracting Party shall keep its report up to date by promptly submitting amendments to the Secretariat. The Charter Conference shall review these reports periodically.
5. Any Contracting Party may notify to the Secretariat any action or failure to act, by any other Contracting Party, which it considers pertaining to or affecting the implementation of this Protocol.
6. The Charter Conference may receive and consider reports from Contracting Parties wishing to express concerns regarding another Contracting Party's implementation of its obligations under this Protocol.

ARTICLE 19

TRANSITIONAL ARRANGEMENTS

Contracting Parties listed in Annex PTA may temporarily suspend full compliance with its obligations under one or more of the following provisions of the Protocol:

Article 9(1)
Article 9(2)(b)
Article 12
Article 14
Article 17(2)

Contracting Parties, which have temporarily suspended full compliance under this Article, undertake to comply fully with the relevant obligations by 1 July 2007.

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ARTICLE 20

REGIONAL ECONOMIC INTEGRATION ORGANISATION

1. For the purposes of this Protocol, the “Area” of a Contracting Party referred to in Article 7(10)(a) of the Treaty shall, as regards Contracting Parties which are members of a Regional Economic Integration Organisation, mean the area to which the treaty establishing such a Regional Economic Integration Organisation applies.
2. A Regional Economic Integration Organisation undertakes to ensure that its provisions treat Energy Materials and Products originating in another Contracting Party and in free circulation in its Area no less favourably than Energy Materials and Products originating in its constituent member-states. Furthermore, the rules of a Regional Economic Integration Organisation shall provide an overall standard at least equivalent to that resulting from the provisions of this Protocol.

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PART VI

DISPUTE SETTLEMENT

ARTICLE 21

SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

If a dispute concerning the application or interpretation of this Protocol, either exclusively or in conjunction with the Treaty, has not been settled through diplomatic channels within a reasonable period of time, either Contracting Party may, upon written notice to the other party to the dispute, submit the matter to an ad hoc arbitral tribunal in accordance with, *mutatis mutandis*, the procedures of Article 27, paragraph 3, of the Treaty.

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PART VII

INSTITUTIONAL PROVISIONS

ARTICLE 22

THE ROLE OF THE CHARTER CONFERENCE

All decisions made by the Charter Conference in accordance with this Protocol shall be made by only those Contracting Parties to the Treaty who are Contracting Parties to this Protocol.

ARTICLE 23

SECRETARIAT AND FINANCING

1. The Secretariat established by Article 35 of the Treaty shall provide the Charter Conference with all necessary assistance for the performance of its duties under this Protocol and provide such other services in support of the Protocol as may be required, subject to approval by the Charter Conference.
2. The costs of the Secretariat and Charter Conference arising from this Protocol shall be met by the Contracting Parties to this Protocol according to their capacity to pay, determined according to the formula specified in Annex B to the Treaty.

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PART VIII

FINAL PROVISIONS

ARTICLE 24

SCOPE OF FINAL PROVISIONS

Subject to the provisions contained in this Part, the Final Provisions of the Treaty shall apply mutatis mutandis to this Protocol.

ARTICLE 25

SIGNATURE

This Protocol shall be open for signature at [Brussels from xx to yy] by the states and Regional Economic Integration Organisations which are signatories to the Treaty or have acceded to the Treaty.

ARTICLE 26

RATIFICATION, ACCEPTANCE OR APPROVAL

This Protocol shall be subject to ratification, acceptance or approval by signatories. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

ARTICLE 27

ACCESSION

This Protocol shall be open for accession, from the date on which the Protocol is closed for signature, by states and Regional Economic Integration Organisations which have signed the Charter and are Contracting Parties to the Treaty, on terms to be approved by the Charter Conference. The instruments of accession shall be deposited with the Depositary.

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ARTICLE 28

AMENDMENTS

1. Any Contracting Party may propose amendments to this Protocol.
2. The text of any proposed amendment to this Protocol shall be communicated to Contracting Parties by the Secretariat at least three months before the date on which it is proposed for adoption by the Charter Conference.
3. Amendments to this Protocol, the texts of which have been adopted by the Charter Conference, shall be communicated by the Secretariat to the Depositary which shall submit them to all Contracting Parties for ratification, acceptance or approval.
4. Instruments of ratification, acceptance or approval of amendments to this Protocol shall be deposited with the Depositary. Amendments shall enter into force between Contracting Parties having ratified, accepted or approved them on the thirtieth day after deposit with the Depositary of instruments of ratification, acceptance or approval by at least three-fourths of the Contracting Parties. Thereafter, the amendments shall enter into force for any other Contracting Party on the thirtieth day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendments.

ARTICLE 29

ENTRY INTO FORCE

1. This Protocol shall enter into force on the thirtieth day after the date of deposit of the fourth instrument of ratification, acceptance or approval thereof, or of accession thereto, by a state or Regional Economic Integration Organisation which is a Contracting Party to the Treaty.
2. For each state or Regional Economic Integration Organisation for which the Treaty has entered into force and which ratifies, accepts, or approves this Protocol or accedes thereto after the Protocol has entered into force in accordance with paragraph (1), the Protocol shall enter into force on the thirtieth day after the date of deposit by such state or Regional Economic Integration Organisation of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraph (1), any instrument deposited by a Regional Economic Integration Organisation shall not be counted as additional to those deposited by member states of such organisation.

DRAFT

ARTICLE 30

PROVISIONAL APPLICATION

1. Each signatory agrees to apply this Protocol provisionally pending its entry into force for such signatory in accordance with Article 29, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.
2. (a) Notwithstanding paragraph (1) any signatory may, when signing, deliver to the Depositary a declaration that it is not able to accept provisional application. The obligation contained in paragraph (1) shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notification to the Depositary.
(b) Neither a signatory which makes a declaration in accordance with subparagraph (a) nor Entities of that signatory may claim the benefits of provisional application under paragraph (1).
3. Any signatory may terminate its provisional application of this Protocol by written notification to the Depositary of its intention not to become a Contracting Party to the Protocol or by withdrawal in accordance with Article 31. Termination of provisional application for any signatory shall take effect upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depositary.
4. A state or Regional Economic Integration Organisation which, prior to this Protocol's entry into force, accedes to the Protocol in accordance with Article 27 shall, pending the Protocol's entry into force, have the rights and assume the obligations of a signatory under this Article.

ARTICLE 31

WITHDRAWAL

1. At any time after five years from the date on which this Protocol has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depositary of its withdrawal from the Protocol.
2. Any Contracting Party that withdraws from the Treaty shall be considered to have withdrawn from this Protocol.
3. The effective date of withdrawal under paragraph (1) shall be ninety days after receipt of notification by the Depositary. The effective date of withdrawal under paragraph (2) shall be the same as the effective date of withdrawal from the Treaty.

DRAFT

ARTICLE 32

STATUS OF ANNEXES AND DECISIONS

The Annexes to this Protocol and the Decision set out in Annex 2 to the Final Act of the Energy Charter Protocol on Transit are integral parts of the Protocol.

ARTICLE 33

DEPOSITARY

The Government of the Portuguese Republic shall be the Depositary of this Protocol.

ARTICLE 34

AUTHENTIC TEXTS

In witness whereof the undersigned, being duly authorized to that effect, have signed this Protocol in English, French, German, Italian, Russian and Spanish, of which each text is equally authentic, in one original, which will be deposited with the Government of the Portuguese Republic.

DRAFT

ANNEXES TO THE PROTOCOL

ANNEX PTA

CONTRACTING PARTIES' TRANSITIONAL MEASURES

(In accordance with Article 19)

List of Contracting Parties entitled to transitional arrangements.

Georgia

Article 9(1), Article 9(2)(b), Article 12 and Article 14

Ukraine

Article 17(2)

The Republic of Uzbekistan

Article 17(2)

ANNEX RG

Without prejudice to the scope of the this Protocol, for the purposes of the comparative determination required by Article 9, 10 and 11, Transit Agreements or agreements relating to construction, operation or use of an Energy Transport Facility used for the Transit of Energy Materials and Products concluded by Georgia or a state entity of Georgia, prior to the adoption of the text of this Protocol, shall not serve as the basis for such determination.

DECISION WITH RESPECT TO THE TRANSIT PROTOCOL

The Energy Charter Conference has adopted the following decision:

With respect to Article 8(4)

1. The application of Article 8(4) becomes effective when the Russian Federation deposits its instruments of ratification of the Energy Charter Protocol on Transit.
2. The Charter Conference should periodically consider the effects of Article 8(4) on security of supply and competition.