

DRAFT TREATY

20 August 1991

BASIC PROTOCOL TO THE EUROPEAN ENERGY CHARTER

PREAMBLE

The Parties to this Agreement,

Having regard to the Charter of Paris for a New Europe signed on 21 November 1990,

Having regard to the European Energy Charter signed in
[] on [];

Aware that all Signatories to the European Energy Charter undertook to agree a basic protocol to place the commitments contained in that Charter on a secure and binding international legal basis;

Desiring to establish the structural framework required to implement the principles enunciated in the European Energy Charter;

Having regard to the objective of progressive liberalisation of international trade and to the principle of avoidance of discrimination in international trade, as set out in particular in the General Agreement on Tariffs and Trade;

Having regard to national competition rules concerning mergers, monopolies, anti-competitive practices and abuse of dominant position where these are already established;

Having regard to the competition rules applicable to member states of the European Community under the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community;

Having regard to the competition rules applicable to contracting parties to the European Economic Area;

Having regard to the work in the Organisation for Economic Co-operation and Development and the United Nations Committee on Trade and Development to increase co-operation between sovereign states on competition matters;

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Whereas it is desirable in the field of energy, as elsewhere, to promote a free, open market which benefits consumers and world trade;

Whereas, a free, open market in energy can best be facilitated by increasing co-operation between states in order to eliminate market distortion and introduce greater competition;

Whereas to secure increased co-operation it is necessary to improve the transparency of costs and prices by monopoly producers, carriers, and suppliers;

Whereas the creation of a free open market requires freedom of establishment and freedom of access on non-discriminatory terms for producers, carriers and suppliers subject only to restrictions which are objectively justifiable, non-discriminatory, transparent, and proportional;

Whereas access will be facilitated by the use of [international] [European] standards and specifications where possible;

Whereas a free open market in energy is best achieved by ensuring regulation where a dominant position exists in order to facilitate new entrants to the market and prevent market distortion and abuse of the market;

Whereas to ensure the proper operation of a free open market it is necessary to separate the functions of regulation from the functions of extraction, production, carriage and supply;

Have agreed as follows:

PART I
DEFINITIONS
Article 1

(1) For the purposes of this Agreement unless the context otherwise requires :

- (a) "Charter" means the European Energy Charter;
- (b) "Contracting Party" means a party to this Agreement;
- (c) "Core Protocol" means any protocol listed in Article 3 of this Agreement.
- (d) "Energy Materials and Products" has the meaning given to it in Article 8 below;
- (e) "Investment" means every kind of asset, including changes in the form in which assets are invested and in particular, though not exclusively, includes any of the following :
 - (i) movable and immovable property and any other related property rights such as mortgages liens or pledges;
 - (ii) shares in, and stock, bonds and debentures of, and any other form of participation in, a company or business enterprise;
 - (iii) claims to money, and claims to performance under contract having a financial value;
 - (iv) intellectual property rights, goodwill, technical processes, know-how and any other benefit or advantage attached to a business;
 - (v) rights, conferred by law or under contract, to undertake any commercial activity, including the search for, or the cultivation, extraction or exploitation of natural resources;

which is used in connection with the implementation of the principles of the Charter and in accordance with the provisions of this Agreement.

- (f) "Investor" means with regard to a Contracting Party:

- (i) natural persons having the citizenship or nationality of that Contracting Party in accordance with its laws;
- (ii) any corporations, companies, firms, enterprises, organisations and associations incorporated or constituted under the law in force in the Territory of that Contracting Party;

provided that that natural person, corporation, company, firm, enterprise, organisation or association is competent, in accordance with the laws of that Contracting Party, to make Investments in the Territory of another Contracting Party;

(g) "Returns" means the amounts yielded by an Investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(h) "Supplementary Protocol" means any protocol listed in Article 4 of this Agreement.

(i) "Territory" means in respect of each Contracting Party its land territory as well as those maritime areas adjacent to the outer limit of the territorial sea of any of its territories, over which the State concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

PART II

GENERAL OBLIGATIONS

ARTICLE 2

Limitations on the Applicability of Certain Provisions

(1) Each Contracting Party shall not invoke or otherwise take advantage in any way of the provisions of Part II of this Agreement and no such provision shall be opposable to another Contracting Party except in the context of and in accordance with a Core Protocol or Supplementary Protocol which the relevant Contracting Parties have ratified, accepted or approved in accordance with Article 33 below.

(2) Each Contracting Party shall require its Investors not to invoke or otherwise take advantage in any way of the provisions of Part II or Part III of this Agreement and no such provision shall be opposable to another Contracting Party or its Investors except in accordance with paragraph (1) above.

ARTICLE 3

Core Protocols

(1) Each Contracting Party shall negotiate in good faith and take all necessary measures subject only to Article 42 (5) below to adopt, sign and ratify, accept or approve all Core Protocols.

(2) Each of the Articles of this Agreement listed in this paragraph shall be the subject of a separate Core Protocol to be negotiated in accordance with this Agreement: Article []; Article [] etc.

(3) In addition to the Core Protocols specified in paragraph (2) above, the following matters shall be the subject of separate Core Protocols: [cross reference to Title III of Charter plus emergencies].

(4) The Contracting Parties may in accordance with Articles 26 and 27 below agree upon additions to or deletions from the list of Core Protocols specified in this Article, including any downgrading of a Core Protocol to a

Supplementary Protocol or upgrading of a Supplementary Protocol to a Core Protocol.

ARTICLE 4

Supplementary Protocols

(1) Those Contracting Parties considering it necessary to or desirable for their proper implementation of the principles of the Charter and the provisions of this Agreement shall sign and ratify, accept or approve any or all of the Supplementary Protocols.

(2) Each of the following matters shall be the subject of a separate Supplementary Protocol negotiated in accordance with this Agreement: [cross reference to Title III of Charter].

(3) The Contracting Parties may in accordance with Articles 26 and 27 below agree upon additions to or deletions from the list of Supplementary Protocols specified in this Article.

ARTICLE 5

Energy Policies

(1) Each Contracting Party recognises that its governmental policies concerning matters the subject of this Agreement (hereinafter referred to as "energy policies") are linked to the energy policies of other Contracting Parties. The Governing Council referred to in Article 26 below shall meet at such regular intervals as it may specify to review the energy policies of the Contracting Parties and to discuss matters of mutual interest relating to such policies.

(2) Energy policies shall be guided by free market principles in order to promote efficiency in production, distribution and consumption of Energy Materials and Products in the following ways:

(a) Where there is a monopoly or dominant position in the extraction, production, carriage or supply of Energy Materials and Products, the Contracting Parties agree to adopt regulatory regimes which seek to imitate the operation of free markets and which provide for access by potential new entrants;

(b) Where there is a monopoly or dominant position, there shall be transparency of pricing and conditions of

supply and separation of operations of extraction, production, carriage and supply of Energy Materials and Products so as to reduce the opportunities for monopoly pricing and cross-subsidy;

(c) Where a monopoly or dominant position does not prevail, prices shall be determined by the market.

ARTICLE 6

Procurement Policies

Each Contracting Party shall ensure that a governmental or non-governmental entity (hereinafter referred to as an "Awarding Body") responsible for the award of contracts for the supply of works or services with respect to any matter the subject of this Agreement applies criteria in awarding such contracts which are objective and transparent and do not discriminate on grounds of nationality. In particular, the conditions regarding tender for such contracts shall not be such as to place suppliers or contractors from one Contracting Party at a disadvantage when compared to suppliers or contractors from any other Contracting Party including the Contracting Party in whose Territory the contract is to be performed. Except in limited circumstances which are objectively justifiable, such contracts shall be awarded on the basis of open competition, to which end each such Awarding Body shall give effective publicity to, and allow such time as is reasonable in the circumstances for the submission of tenders for, such contracts by suppliers or contractors from the other Contracting Parties.

ARTICLE 7

Sovereignty over Natural Resources

The Contracting Parties recognise the principle of national sovereignty over natural resources. In particular, each Contracting Party shall be free to decide within its Territory the areas to be made available for exploration and exploitation of its natural resources and the rate at which they shall be depleted or otherwise exploited. Such sovereignty shall include the right to specify any taxes or royalties payable by virtue of such exploitation. Each Contracting Party shall be responsible for the regulation of environmental and safety aspects of such exploration and exploitation within its Territory.

ARTICLE 8

Non-Discrimination

In the administration of its own laws, regulations and requirements affecting production of and trade in matters the subject of this Agreement (hereinafter referred to as "Energy Materials and Products") and services related to the production and supply of such Materials and Products each Contracting Party undertakes:

- (a) To apply any customs duties or charges imposed in connection with importation or exportation immediately and unconditionally in the same way to Energy Materials and Products originating in or destined for any other Contracting Party;
- (b) To apply laws, regulations and requirements and charges affecting the internal production, sale, offering for sale, purchase, transportation, distribution or use of Energy Materials and Products without discrimination as between domestic and imported production;
- (c) To ensure that technical and safety regulations and standards are not prepared, adopted or applied so as to create obstacles to international trade or to discriminate as between domestic and imported products;
- (d) Subject to observance of its laws and regulations, to permit an Investor based in another Contracting Party freedom of establishment and access to energy resources, without discrimination against such Investor on the basis of its nationality of origin.

ARTICLE 9

Freedom of Movement

Each Contracting Party undertakes:

- (a) To facilitate by the most convenient means the transport or transmission through its Territory of Energy Materials and Products which are in transit between two or more other Contracting Parties, without distinction as to the origin, destination or ownership of such Materials and Products or discrimination as to pricing on the basis of such distinction, and without imposing any unnecessary or unreasonable delays, restrictions or charges;
- (b) To limit the amount of any fees and charges imposed in connection with the importation or exportation of Energy

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Materials and Products (other than import and export duties and internal taxes) to the approximate cost of services rendered, and to avoid indirect protection of domestic products or taxation of imports or exports for fiscal purposes;

(c) Not to institute or maintain any form of prohibitions or restrictions (other than duties, taxes or other charges) or measures having equivalent effect on the importation of Energy Materials and Products from any other Contracting Party or on the exportation or sale for export of any such Materials and Products destined for the Territory of any other Contracting Party.

ARTICLE 10

Transparency

(1) Each Contracting Party undertakes that laws, regulations, judicial decisions and administrative rulings of general application which are made effective by any Contracting Party and which relate to the production, distribution or use of Energy Materials and Products shall be published promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them. Agreements made between governments or governmental agencies of two or more Contracting Parties which affect international trade in Energy Materials and Products between Contracting Parties shall also be published.

(2) The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information in such a way as to impede law enforcement or otherwise be contrary to the public interest, or to prejudice the legitimate commercial interests of particular public or private enterprises.

(3) Each Contracting Party undertakes to nominate and publish details concerning a central enquiry point to which requests for information about relevant laws, regulations, judicial decisions and administrative rulings may be addressed and to communicate these details to the Secretariat established under Article 28 below.

(4) In respect of the matters the subject of this Agreement each Contracting Party shall notify of and upon request make available to the Secretariat established under Article 28 below copies of all laws and regulations applicable in its Territory, any amendments made to such laws or regulations from time to time, and full information, at intervals to be determined by the Governing Council referred to in Article 26 below on the implementation of its energy

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policies as defined in Article 5 above.

(5) To promote transparency, comparability and consistency all financial information provided by Contracting Parties pursuant to this Agreement shall be prepared in accordance with accounting standards to be agreed by the Contracting Parties in accordance with Article 27 below.

ARTICLE 11

State Aid

Where State aid is granted it shall not be used to distort competition in trade between the Contracting Parties.

ARTICLE 12

Unfair Trade

The Contracting Parties undertake that in cases of alleged dumping or subsidisation of Energy Materials and Products any complaint by a Contracting Party against another Contracting Party or against an Investor located in the Territory of another Contracting Party shall be dealt with according to the criteria and procedures set out in Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade as amended or otherwise applied or implemented from time to time.

ARTICLE 13

State Trading Enterprises

Each Contracting Party undertakes that if it establishes or maintains a government-controlled Investor wherever located, or grants to any such Investor formally or in effect, exclusive or special privileges, such Investor shall conduct all purchases or sales of Energy Materials and Products which involve imports or exports in a manner consistent with the provisions of this Agreement.

ARTICLE 14
Tax

The Contracting Parties shall, as far as is necessary to give effect to the principles of the Charter and the provisions of this Agreement, enter into bilateral negotiations with each other with a view to securing for the benefit of their Investors the abolition of double taxation with respect to the matters the subject of this Agreement.

ARTICLE 15

Observance By Sub-Federal Authorities

Any Contracting Party which has a federal structure undertakes that this Agreement shall apply to all provisions such as duties, charges, laws, regulations and requirements which are imposed by authorities at the sub-federal level.

ARTICLE 16

Exceptions

The provisions of this Agreement shall not preclude any Contracting Party from imposing prohibitions or restrictions on imports, exports or goods in transit for the purposes of protecting its essential security interests, or human or animal life or health, or from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security, provided that such prohibitions or restrictions shall not constitute disguised restrictions on trade or arbitrary discrimination as between Contracting Parties.

ARTICLE 17

Intellectual Property

(1) Each Contracting Party shall, subject to paragraphs (2) and (3) below, afford protection under its municipal laws at least equal to and to the same extent as the protection it applies to its own nationals with respect to any industrial, commercial or intellectual property (hereinafter referred to as "intellectual property") entailed in or created as a result of the activities carried out and Investments made in its Territory by Investors of other Contracting Parties.

(2) Where a Contracting Party has not acceded to or ratified, or has not yet implemented, the Paris Convention

on the Protection of Industrial Property (1967 Stockholm revision) (the "Paris Convention") or the Berne Copyright Convention (1971 Paris revision) (the "Berne Convention") the level of protection to be afforded under paragraph (1) above shall equal at least the minimum protection required by those Conventions to be afforded the intellectual property rights which are the subject matter of those Conventions.

(3) In the event of the adoption of an agreement, within the framework of the Uruguay Round of the General Agreement on Tariffs and Trade, on the Trade Related Aspects of Intellectual Property (hereinafter referred to as the "TRIPS Agreement"), the level of protection to be afforded under paragraphs (1) and (2) above shall equal at least the minimum level of protection provided for by the TRIPS Agreement where the latter provides for a higher minimum level of protection than that afforded under the Paris and Berne Conventions under paragraphs (1) and (2) above.

(4) In relation to any information of industrial or commercial value, whether intellectual property or not, which is secret information, and in respect of which reasonable steps have been taken to maintain such secrecy, whether or not it falls outside the scope of the protection afforded by virtue of paragraphs (1) to (3) above, each Contracting Party shall ensure that its municipal laws in respect of such information:

- (a) recognise its existence; and
- (b) grant rights of ownership in it; and

provide means for the prevention of its disclosure, acquisition or use, and provide both remedies and access to remedies for disclosure, acquisition or use of the same, where this is to be or is without the owner's consent and contrary to honest practices.

(5) The Contracting Parties may agree such additional provisions as they see fit to ensure fully adequate protection of intellectual property covered by this Agreement.

PART III

INVESTMENT PROMOTION AND PROTECTION

Article 18

Promotion and Protection of Investments

(1) Each Contracting Party shall in accordance with the principles of the Charter and the provisions of this Agreement encourage and create stable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Territory, and subject to its right to exercise powers conferred by its laws, shall admit such Investments.

(2) Investments of Investors of any Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the Territory of any other Contracting Party. No Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of Investments in its Territory of Investors of any other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into consistently with this Agreement with regard to Investments of Investors of any other Contracting Party.

(3) For the avoidance of doubt this Agreement does not affect any investment promotion and protection agreement which has been or will be concluded by any Contracting Party with any other State, whether or not a Contracting Party, which deals with matters outside the scope of this Agreement.

Article 19

Treatment of Investments

- (1) No Contracting Party shall in its Territory subject Investments or Returns of Investors of another Contracting Party to treatment less favourable than that which it accords to Investments or Returns of its own Investors or the Investors of any other Contracting Party or any third State.
- (2) No Contracting Party shall in its Territory subject Investors of another Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their Investments, to treatment less favourable than that which it accords to its own Investors or the Investors of any other Contracting Party or any third State.
- (3) Contracting Parties shall make every effort to liberalise further the conditions enjoyed by the Investments and Investors of other Contracting parties by virtue of this Agreement. In particular they undertake:
- (a) Not to introduce new restrictions upon or to modify existing laws, regulations or practices in a manner adversely affecting the entry, treatment, management, use, enjoyment or disposal of the Investments or Returns of the Investors of any other Contracting Party;
 - (b) To limit any restrictions on the nature, form or size of an Investment made by an Investor of another Contracting Party which would otherwise be permitted under the Charter or the provisions of this Agreement;
 - (c) Without prejudice to Article 23 below, not to introduce changes in tax regimes having a discriminatory or expropriatory effect on the Investments or Investors of any other Contracting Party;
 - (d) Not to apply any conditions with regard to the management, maintenance, use, enjoyment or disposal of Investments of other Contracting Parties which would be inconsistent with their obligations under Part II of this Agreement;
 - (e) To consider whether there are further steps which could be taken consistent with the provisions of this Agreement to improve conditions for the

Investments and Investors of other Contracting Parties.

ARTICLE 20

Compensation for Losses

(1) Investors of any Contracting Party whose Investments in the Territory of another Contracting Party suffer losses owing to any armed conflict, including war, a state of national emergency or civil disturbances in the Territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own Investors or the Investors of any other Contracting Party or any third State. Resulting payments shall be made without delay and be freely transferable.

(2) Without prejudice to paragraph (1) above Investors of a Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the Territory of another Contracting Party resulting from

- (a) requisitioning of their property by the latter's forces or authorities, or
- (b) destruction of their property by the latter's forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 21

Expropriation

(1) Investments of Investors of any Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the Territory of any other Contracting Party except for a purpose related to its internal needs on a non-discriminatory basis and against the payment of prompt, of adequate and effective compensation. Such compensation shall amount to the real value of the Investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal

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commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The Investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its Investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company or enterprise which is incorporated or constituted under the law in force in any part of its own Territory, and in which Investors of any other Contracting Party have a shareholding, the provisions of paragraph (1) above shall apply to the extent necessary to guarantee prompt, adequate and effective compensation for those Investors.

Article 22

Repatriation of Investments and Returns

(1) Each Contracting Party shall in respect of Investments made in its Territory by Investors of any other Contracting Party guarantee to such Investors the unrestricted transfer beyond its Territory of their Investments and Returns.

(2) Transfers under paragraph (1) above shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the Investor and the Contracting Party concerned. Unless otherwise agreed by the Investor with the Contracting Party concerned transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force of the Contracting Party in whose Territory the Investment was made.

Article 23

Exceptions

The provisions of this Agreement shall not be construed so as to oblige any one Contracting Party to extend to the Investors of any other Contracting Party the benefit of any treatment, preference or privilege resulting from

(a) any existing or future customs union, organisation for mutual economic assistance or similar international agreement, whether multilateral or bilateral, to which any of the Contracting Parties concerned is or may become a party, or

(b) any international agreement or arrangement or any municipal legislation relating wholly or mainly to taxation.

ARTICLE 24

Assignment of Rights

(1) If a Contracting Party, its designated agency or a company or enterprise incorporated in a Contracting Party other than an Investor (the "Indemnifying Party") makes a payment under an indemnity given in respect of an Investment in the Territory of another Contracting Party, (the "Host Party") or otherwise acquires the rights and claims to such an Investment, the Host Party shall recognise

- (a) the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims arising from such an Investment, and
- (b) that the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original Investor.

(2) The Indemnifying Party shall be entitled in all circumstances to

- (a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1) above, and
- (b) any payments received in pursuance of those rights and claims,

as the original Investor was entitled to receive by virtue of this Agreement in respect of the Investment concerned and its related Returns.

(3) Any payments received in non-convertible currency by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Party for the purpose of meeting any expenditure incurred in the Territory of the Host Party.

ARTICLE 25

Investment Transparency

For the avoidance of doubt, the provisions of Article 10 above shall also apply to laws, regulations, judicial decisions and administrative rulings of general application

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affecting the Investments and Investors of any Contracting
Party in the Territory of another Contracting Party.

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PART IV
ORGANISATION AND MANAGEMENT

Article 26

Governing Council

(1) A Governing Council of representatives of the Contracting Parties is hereby established. The first meeting of the Governing Council shall be convened by the secretariat designated on an interim basis under Article 28 below not later than one year after signature of this Agreement. Thereafter, ordinary meetings of the Governing Council shall be held at [regular] intervals to be determined by the Council at its first or any subsequent meeting.

(2) Extraordinary meetings of the Governing Council shall be held at such other times as may be deemed necessary by the Council, or at the written request of any Contracting Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Contracting Parties.

(3) The Governing Council shall by consensus agree upon and adopt rules of procedure and financial rules for itself and for any subsidiary bodies it may establish, as well as the staff matters referred to in Article 28 (2) below and the financial provisions governing the functioning of the Secretariat.

(4) The Governing Council shall keep under continuous review the implementation of this Agreement and, in addition, shall:

(a) Promote in accordance with Part II of this Agreement the co-ordination of appropriate policies, strategies and measures to carry out the principles of the Charter and the provisions of this Agreement, and make recommendations on any other measures relating to this Agreement;

(b) Consider and adopt, in accordance with Part II of this Agreement programmes of work to be carried out by the Secretariat, being mindful of the desire to avoid unnecessary duplication and to take advantage of the work and expertise of competent international bodies;

(c) Consider and adopt, as required, in accordance with Part VI of this Agreement, amendments to this Agreement;

(d) Consider and adopt Core Protocols and Supplementary Protocols together with amendments thereto;

(e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Agreement;

(f) Consider and undertake any additional action that may be required for the achievement of the purposes of this Agreement.

Article 27 Voting

(1) The Contracting Parties shall make every effort to reach agreement by consensus on any matter requiring their decision, adoption or approval under this Agreement.

(2) The adoption of

- Agreement*
- (a) amendments to this ~~Amendment~~;
 - (b) a Core Protocol; and
 - (c) amendments to a Core Protocol // shall be by Consensus.

(3) If all efforts at consensus have been exhausted and no agreement reached, the following matters shall as a last resort be decided by a three-fourths majority vote of the Contracting Parties present and voting at the meeting of the Governing Council at which any such matters falls to be decided:

(a) Adoption of Supplementary Protocols and, subject to Article 36 (3) below, amendments to any Supplementary Protocol;

(b) Agreement to the accession of a third State to this Agreement or any Protocol in accordance with Article 34 below;

(c) Agreement to the terms of an Association Agreement in accordance with Article 37 below.

(4) Decisions regarding funding principles for the Governing Council, or other budgetary matters of the Council or the Secretariat, shall, subject to paragraph (1) above, be taken by a qualified majority consisting of that proportion of the Contracting Parties which together contributes at least three fourths of the

together contributes at least three fourths of the funding to meet the administrative costs of the Secretariat under Article 29 below.

(5) In all other cases, unless a contrary intention appears herein, decisions shall be taken by a simple majority of all Contracting Parties present and voting.

(6) For the purposes of this Article, "Contracting Parties present and voting" means Contracting parties present and casting an affirmative or negative vote.

Article 28 Secretariat

(1) The Secretary General shall be appointed from among candidates proposed by Contracting Parties at the first meeting of the Governing Council.

(2) The structure, staff levels and standard terms of employment of officials and employees and of consultants and other advisers to the Secretariat shall be approved by the Governing Council.

(3) Any privileges and immunities considered necessary for the Secretariat to carry out its functions under this Agreement, including the terms of any headquarters agreement, shall be approved by the Governing Council.

(4) The Secretary General shall propose candidates, for senior posts reporting directly to him, for appointment by the Governing Council. All other appointments to the Secretariat shall be made by the Secretary-General or under his authority. The Secretary-General shall propose or appoint as appropriate the members of the Secretariat mindful of the desire to keep the number of members of the Secretariat to the minimum consistent with efficiency.

(5) The paramount consideration in the appointment of the Secretary-General and other personnel of the Secretariat shall be the necessity of ensuring the highest standards of integrity, competence and efficiency.

(6) The Secretariat functions will be carried out on an interim basis pending the entry into force of this Agreement pursuant to Article 38 below by a provisional secretariat until completion of the first ordinary meeting of the Governing Council held pursuant to

Article 26 above or any subsequent meetings which may take place before entry into force is achieved.

(7) The functions of the Secretariat shall be:

(a) To review, assist in, report on and act as a clearing house for information concerning, the implementation by the Contracting Parties of the principles of the Charter and the provisions of this Agreement;

(b) With respect to the matters the subject of this Agreement:

(i) to receive and hold as necessary copies of the national legislation applicable in the Territory or any part thereof, of each Contracting Party, and

(ii) to distribute upon request by any Contracting Party or Investor information on obtaining access to such national legislation;

(c) To arrange for and service meetings of the Governing Council;

(d) To co-ordinate the preparation of draft Core Protocols and Supplementary Protocols for presentation to the Governing Council;

(e) To perform the functions assigned to it by any Core Protocol or Supplementary Protocol;

(f) To prepare reports on its activities carried out in implementation of its functions under this agreement and present them to the Governing Council

(g) To prepare annual accounts and budget estimates in respect of its administrative costs for submission to the Governing Council for approval;

(h) To seek where appropriate the services of competent international bodies, to make use of the resources, work and expertise of these bodies and to enter into such administrative or contractual arrangements as may be required for the effective discharge of its functions;

(i) To carry out the programmes of work assigned to it by the Governing Council;

(j) To perform such other functions as may be determined by the Governing Council.

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Article 29

Funding Principles

(1) Each Contracting Party shall meet its own costs of representation at meetings of the Governing Council.

(2) Expenses of meetings of the Governing Council shall be regarded as an administrative cost of the Secretariat.

(3) The administrative costs of the Secretariat shall be met by the Contracting Parties by contributions payable in the same proportion and on the same terms as assessments for the annual budget of the Conference on Security and Co-operation in Europe are made for each Contracting Party, with any adjustments on a pro rata basis to ensure there is no shortfall in the budget required by the Secretariat.

PART V

DISPUTE RESOLUTION

ARTICLE 30

Disputes between an Investor and a Contracting Party

(1) This Article shall apply to any legal disputes between an Investor of one Contracting Party and another Contracting Party in relation to an Investment of the former concerning:

(a) the amount or payment of compensation under Articles 20 or 21 of this Agreement; or ~~any other matter consequential upon an act of expropriation in accordance with Article 21 of this Agreement, or~~

(b) any other matter consequential upon an act of expropriation in accordance with Article 21 of this Agreement; or

(c) the consequences of the non-implementation, or of the incorrect implementation, of Article 22 of this Agreement; or

(d) the non-compliance by a Contracting Party with any of the provisions of Part II of this Agreement having adverse implications for the Investment of an Investor in that Contracting Party subject to Article 2 above.

(2) Any such disputes which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to the Secretariat by either party to the dispute. The Secretariat shall use its good offices to attempt a conciliated resolution of the dispute within a further period of three months. If at the end of the latter period no solution has been found then either party to the dispute may submit it to international arbitration.

(3) Where the dispute is referred to international arbitration, the Investor concerned in the dispute shall have the right to refer the dispute either to :

(a) the Institute of Arbitration of the Chamber of Commerce of Stockholm; or

(b) an international arbitrator or *ad hoc* arbitral tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law; the arbitration shall be conducted under these Rules, unless the parties to the dispute agree in writing to modify them.

ARTICLE 31

Disputes between Contracting Parties

- (1) Disputes between Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.
- (2) If a dispute between Contracting Parties cannot thus be settled, it shall upon the request of any Contracting Party to the dispute be submitted to an arbitral tribunal.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party to the dispute shall appoint one member of the tribunal. Those members shall then select a national of a third Contracting Party not a party to the dispute who on approval by the Contracting Parties to the dispute shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other members.
- (4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, any Contracting Party to the dispute may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of any Contracting Party to the dispute or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice President is a national of any Contracting Party to the dispute or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of any Contracting Party to the dispute shall be invited to make the necessary appointments.
- (5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on the Contracting Parties to the dispute. Such Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties to the dispute. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by any Contracting Party to the dispute and this award shall be binding on all Contracting Parties to the dispute. The tribunal shall determine its own procedure.

(6) The provisions of this Article shall apply with respect to any Core Protocol or Supplementary Protocol except as otherwise provided in the Protocol concerned.

PART VI

FINAL PROVISIONS

ARTICLE 32

Signature

This Agreement shall be open for signature by the States and regional economic integration organisations signatory to the Charter at [United Nations Headquarters in New York] from [] to []

ARTICLE 33

Ratification, Acceptance or Approval

This Agreement and any Core Protocol or Supplementary Protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organisations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

[(2) In their instruments of ratification, acceptance or approval, the organisations referred to in paragraph (1) above shall declare the extent of their competence with respect to the matters governed by the Agreement or the relevant Protocol. These organisations shall also inform the Depositary of any substantial modification in the extent of their competence].

ARTICLE 34

Accession

This Agreement and any Core Protocol or Supplementary Protocol shall with the agreement of all the existing Contracting Parties thereto, subject to Article 27 above, be open for accession by States from the date on which the Convention or the Protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

ARTICLE 35

Amendment

(1) Any Contracting Party may propose amendments to this

Agreement, any Core Protocol, or any Supplementary Protocol to which it is a Party.

(2) Amendments to this Agreement or any Core Protocol shall be adopted at a meeting of the Governing Council. Amendments to any Supplementary Protocol shall be adopted at a meeting of the Contracting Parties to the Protocol in question. The text of any proposed amendment to this Agreement or to any Protocol, except as may otherwise be provided in such Protocol, shall be communicated to the Contracting Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Agreement for information.

(3) Amendments which have been adopted by the Contracting Parties shall be submitted by the Depositary to all Contracting Parties for ratification, approval or acceptance.

(4) Ratification, approval or acceptance of amendments shall be notified to the Depositary in writing. Amendments, adopted in accordance with this Agreement shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three-fourths of the Contracting Parties to this Agreement and the Core Protocols or by at least two-thirds of the Parties to the Supplementary Protocol concerned, except as may otherwise be provided in such Supplementary Protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

ARTICLE 36

Relationship between the Agreement and its Protocols

(1) A State or a regional economic integration organisation shall become a Party to the Core Protocols if it becomes a party to this Agreement and may not become a Party to either a Core Protocol or a Supplementary Protocol unless it is, or becomes at the same time, a Party to this Agreement.

(2) Decisions concerning any Core Protocols shall be taken in the same manner as if they were decisions concerning this Agreement.

(3) Decisions concerning any Supplementary Protocol shall be taken only by the Parties to the Protocol concerned.

ARTICLE 37

Association Agreements

Where, in order to further the implementation of the principles of the Charter or the provisions of this Agreement or any Protocol, it is considered necessary or desirable by the Contracting Parties to permit a State to associate itself with this Agreement or any Protocol, an Association Agreement shall be drawn up by the Secretariat for the approval of the Contracting Parties. Such Association Agreement shall set out clearly the rights responsibilities and limitations of associate status for that State, it being understood that differing limitations may be applicable to different States depending upon the number of Protocols with which a State wishes to be associated, the nature of such Protocols and the level of association envisaged by the associating State and permitted by the Contracting Parties.

ARTICLE 38

Entry into Force

- (1) This Agreement and any Core Protocol shall enter into force on the ninetieth day after the date of deposit of the fifteenth instrument of ratification, acceptance, approval or accession thereto.
- (2) Any Supplementary Protocol, except as otherwise provided in such Protocol, shall enter into force on the ninetieth day after the date of deposit of the [tenth] instrument of ratification, acceptance or approval of such Protocol or accession thereto.
- (3) For each Party which ratifies, accepts or approves this Agreement or any Core Protocol or accedes thereto after the deposit of the fifteenth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.
- (4) Any Supplementary Protocol, except as otherwise provided in such Protocol, shall enter into force for a Party that ratifies, accepts or approves that Protocol or accedes thereto after its entry into force pursuant to paragraph (2) above, on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Agreement enters into force for that Party, whichever shall be the later.

(5) For the purposes of paragraphs (1) and (2) above, any instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by member States of such organisation.

ARTICLE 39

Provisional Application

Subject to Article ~~32~~ above the Contracting Parties agree to apply this Agreement provisionally pending its entry into force in accordance with Article 38 above.

ARTICLE 40

Reservations

No reservations may be made to this Agreement.

ARTICLE 41

Transitional Arrangements

It is recognised that due to differences in the way in which Contracting Parties have managed the matters the subject of this Agreement some Contracting Parties will be unable to comply with all the provisions of this Agreement immediately upon entry into force thereof. Therefore, a transitional period of [] years may be invoked by any Contracting Party, provided that a Note setting out the provisions with which it cannot fully comply together with a timetable for the implementation of measures to effect complete compliance is deposited with its instrument of ratification, acceptance or approval in accordance with Article 33 above.

ARTICLE 42

Withdrawal

(1) At any time after five years from the date on which this Agreement has entered into force for a Contracting Party, that Party may withdraw from this Agreement by giving written notification to the Depository.

(2) Except as may be provided in any Core Protocol or Supplementary Protocol at any time after five years from the date on which such Protocol has entered into force for a Contracting Party thereto that Party may withdraw from the Protocol by giving written notification to the Depository.

(3) Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depository, or

on such later date as may be specified in the notification of the withdrawal.

(4) Any Contracting Party which withdraws from this Agreement shall be considered as also having withdrawn from all Core Protocols and any Supplementary Protocols to which it is Party.

(5) Notwithstanding the foregoing provisions of this Article, in the event that a Contracting Party subsequently finds that it is unable to sign and ratify, accept or approve a Core Protocol it shall, without prejudice to the application of Article 37 above, withdraw from this Agreement and any Core Protocol or Supplementary Protocol to which it is already a Party by notification to the Depository within a period of [one year] of the closing date for signature of the Core Protocol in question. Such withdrawal shall in any event be deemed to have taken effect for that Contracting Party with respect to all the remaining Contracting Parties within a further period of [one year].

ARTICLE 43

Depository

(1) The [Secretary-General of the United Nations] shall assume the functions of depository of this Agreement and any Core Protocols or Supplementary Protocols.

2. The Depository shall inform the Contracting Parties, in particular, of:

- (a) The signature of this Agreement and of any Core Protocol or Supplementary Protocol and the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles 33 and 34;
- (b) The date on which the Agreement and any Core Protocol or Supplementary Protocol will come into force in accordance with Article 38;
- (c) Notification of withdrawal made in accordance with Article 42;
- (d) Amendments adopted with respect to the Agreement and any Core Protocol or Supplementary Protocol, their acceptance by the Contracting Parties thereto and their date of entry into force in accordance with Article 35 .

ARTICLE 44

Authentic Texts

The original of this Agreement of which the English, French, German and Russian texts are equally authentic, shall be deposited with [the Secretary-General of the United Nations].

In witness whereof the undersigned, being duly authorised to that effect, have signed this agreement.

Done at [] on the [] day of []