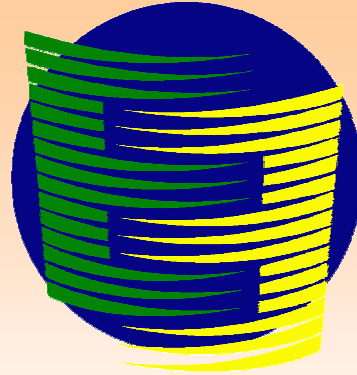




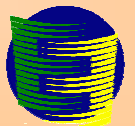
# **Transit Provisions of the Energy Charter Treaty and draft Transit Protocol**

**Dr. Andrei Konoplianik  
Deputy Secretary General  
The Energy Charter Secretariat**

***Energy Charter Secretariat's Conference***  
**“Energy Transit in Eurasia: Challenges and Perspectives”**  
**19-20 October 2004, Sodehotel, Brussels, Belgium**

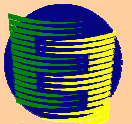
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- 1. Energy Charter Treaty and Transit Protocol**
  - a) Main benefits of the ECT**
  - b) History of transit protocol**
- 2. Major Energy Charter Transit Protocol Issues:**
  - a) Provisions**
  - b) Remaining open issues**
- 3. Benefits**



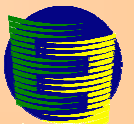
# **BENEFITS OF ECT ON TRANSIT**

- **Freedom of Energy Transit**
- **Non-discrimination:**
  - **As to origin, destination or ownership**
  - **As to pricing**
- **No unreasonable delays, restrictions or charges**
- **Non-interruption of flows until dispute is settled**
- **No mandatory Third Party Access, but access to free (available – EC TP) capacity**



# **BENEFITS OF ECT ON TRANSIT**

- **National Treatment:**
  - Transit treated no less favourably than energy originating in or destined for transit country itself
- **Not place obstacles to new capacity establishment:**
  - Lacking infrastructure
  - Insufficient available capacity



# CONTENTS

## **1. Energy Charter Treaty and Transit Protocol**

**a) Main benefits of the ECT**

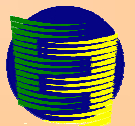
**b) History of transit protocol**

## **2. Major Energy Charter Transit Protocol Issues:**

**a) Provisions**

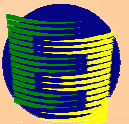
**b) Remaining open issues**

## **3. Benefits**



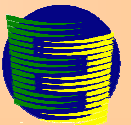
# ENERGY CHARTER TRANSIT PROTOCOL DEVELOPMENTS (1)

- **March 1998: Six Caspian/Central Asian states highlighted the necessity to create a commercially attractive environment for investments in O&G pipeline projects, by addressing the political considerations and the technical, financial, commercial and legal issues for the realisation of such projects.**
- **April 1, 1998: G8 Energy Ministerial held in Moscow with transit as one of three key issues discussed (Transit paper submitted by ECS);**
- **April 23-24, 1998: ECC established Transit Working Group to follow up;**
- **December 3-4, 1998: ECC approved TOR of Energy Charter Working Group on Transit;**
- **December 7, 1999: ECC authorised TWG to commence negotiations of an Energy Charter Protocol on Transit**
- **February 22, 2000: EC TP negotiations started.**



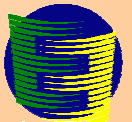
## ENERGY CHARTER TRANSIT PROTOCOL DEVELOPMENTS (2)

- **December 17-18, 2002: 11 ECC. Multilateral phase of EC TP negotiations finished to be continued by bilateral consultations RF-EU on 3 remaining outstanding issues (REIO clause, RFR, transit tariffs/auctions);**
- **June 10, 2003: Bilateral consultations RF-EU. Preliminary agreement reached on 3 outstanding issues between delegations subject to approval in the capitals;**
- **June 23, 2003: Statement of RF Government on EC TP (DPM V.Khristenko) - to continue work on three outstanding issues;**
- **June 26, 2003: 12 ECC. RUF delegation: consultations on 3 EC TP outstanding issues to be continued;**
- **October 4-6, 2003: RF-EU WTO accession negotiations. EU presented new energy-related agenda of 6 issues (“Lamy package”) with demands on transit differing from those in EC TP.**



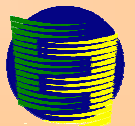
## ECT TRANSIT PROTOCOL DEVELOPMENTS (3)

- **December 1, 2003:** Statement of RF Government (DPM V.Khristenko) on ECT/WTO/transit: to decouple WTO and EC TP negotiations, transit debate - back to EC forum;
- **December 10, 2003:** 13 ECC. RF delegation: no way to finalise EC TP negotiations until ECT/WTO agenda is decoupled. RF-EU EC TP consultations suspended. Draft EC TP made publicly available to act as a guidance when the negotiating parties develop domestic measures in the field of Transit;
- **May 21, 2004:** RF-EU WTO negotiations concluded;
- **June 15, 2004:** 14 ECC. RF and EU stated their readiness to resume EC TP bi-lateral consultations;
- **October 15, 2004:** new round of RF-EU bi-laterals (at expert level) on three outstanding issues for EC TP finalization. RF experts presented a list of questions of RF concerns re implementation of EC TP (transit tariffs, REIO clause, RFR) in the expanding EU space.



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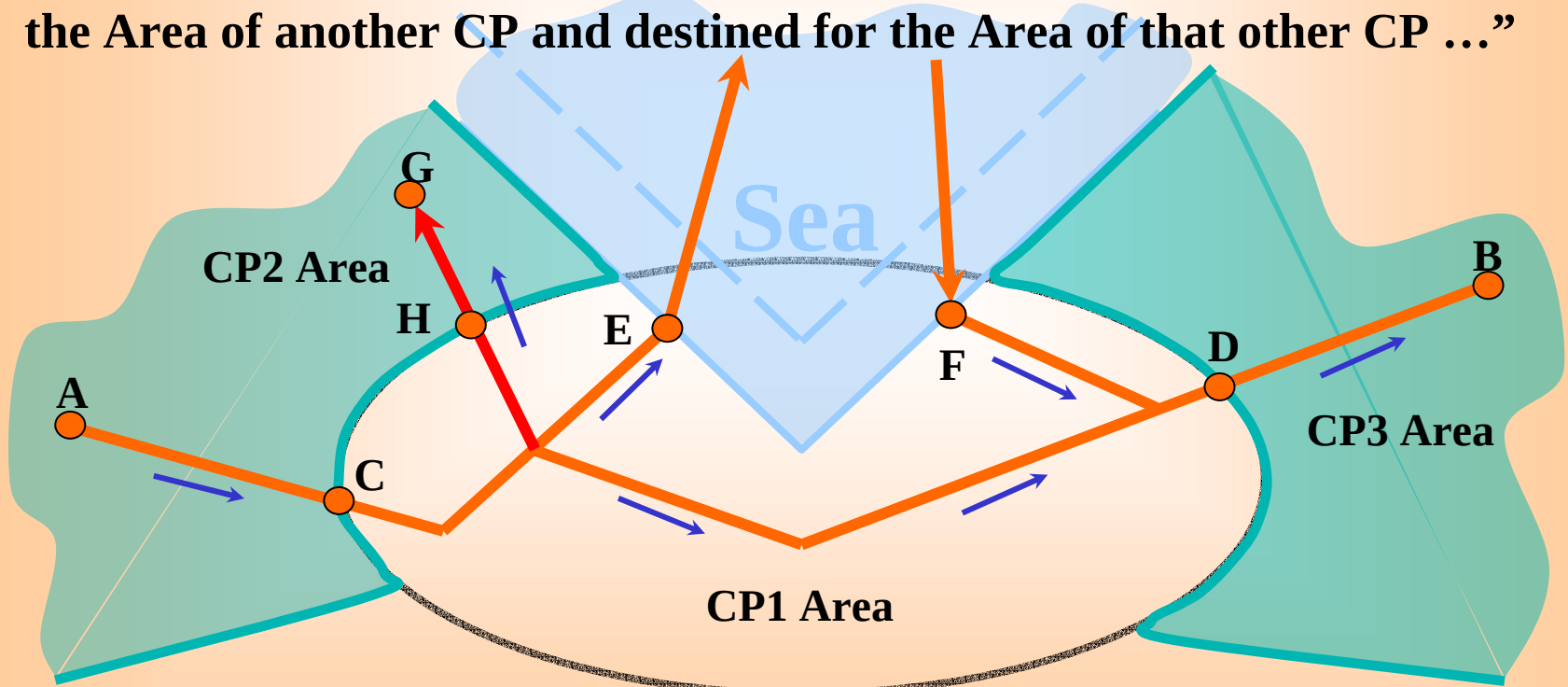


# DEFINITION OF TRANSIT (Art. 7(10) ECT)

“... (a) Transit means:

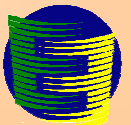
(i) the carriage through the Area of a CP, or to or from port facilities in its Area for loading or unloading, of EMP originating in the Area of another state and destined for the Area of a third state, so long as either the other state or the third state is a CP; or

(ii) the carriage through the Area of a CP of EMP originating in the Area of another CP and destined for the Area of that other CP ...”



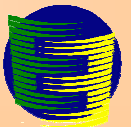
# **ECT TRANSIT PROTOCOL: MAJOR PROVISIONS (1)**

- 1. Obligation to observe Transit Agreements**
- 2. Prohibition of unauthorized taking of EMP in Transit**
- 3. Definition of Available Capacity in Energy Transport Facilities used for Transit**
- 4. Negotiated access of third parties to Available Capacity (mandatory access is excluded)**
- 5. Facilitation of construction, expansion or operation of Energy Transport Facilities used for Transit**
- 6. Transit Tariffs shall be non-discriminating, objective, reasonable and transparent, not affected by market distortions, and cost-based incl. reasonable ROR**



## **ECT TRANSIT PROTOCOL: MAJOR PROVISIONS (2)**

- 7. Technical and accounting standards harmonized by use of internationally accepted standards**
- 8. Energy metering and measuring strengthened at international borders**
- 9. Co-ordination in the event of accidental interruption, reduction or stoppage of Transit**
- 10. Protection of International Energy Swap Agreements**
- 11. Implementation and compliance**
- 12. Dispute settlement**



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## **1. Energy Charter Treaty and Transit Protocol**

**a) Main benefits of the ECT**

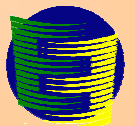
**b) History of transit protocol**

## **2. Major Energy Charter Transit Protocol Issues:**

**a) Provisions**

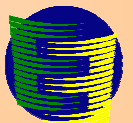
**b) Remaining open issues**

## **3. Benefits**



## REMAINING OPEN ISSUES

- **Transit tariffs: Relation between auctions and cost reflection**
- **Regional Economic Integration Organization (REIO) clause**
- **Cases of mismatch between expiration date of supply and related transit agreements (Right of First Refusal)**



# **TRANSIT TARIFFS: ACHIEVEMENT AND REMAINING ISSUES**

## **AGREEMENT ACHIEVED:**

**Art. 10(1)-(3): Transit Tariffs shall be non-discriminating, objective, reasonable and transparent, not affected by market distortions, and cost-based incl. reasonable ROR**

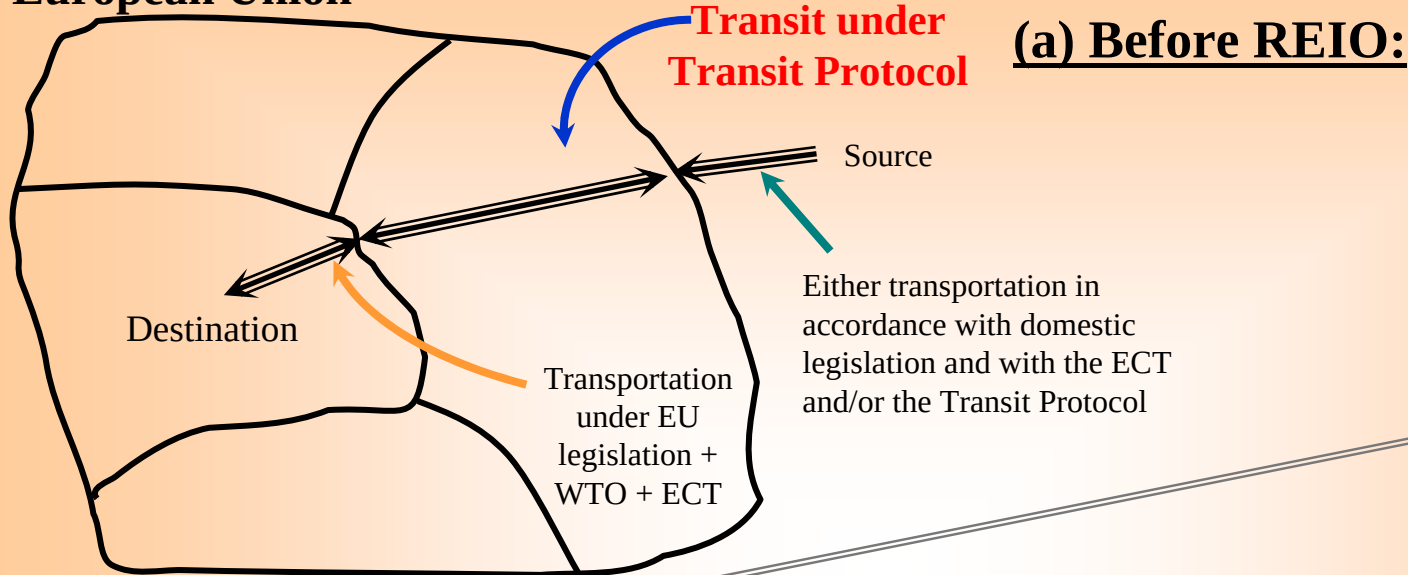
**Art. 10(4): accepts congestion management mechanisms**

## **OPEN:**

**Relation between congestion management mechanisms such as auctions and cost reflection**

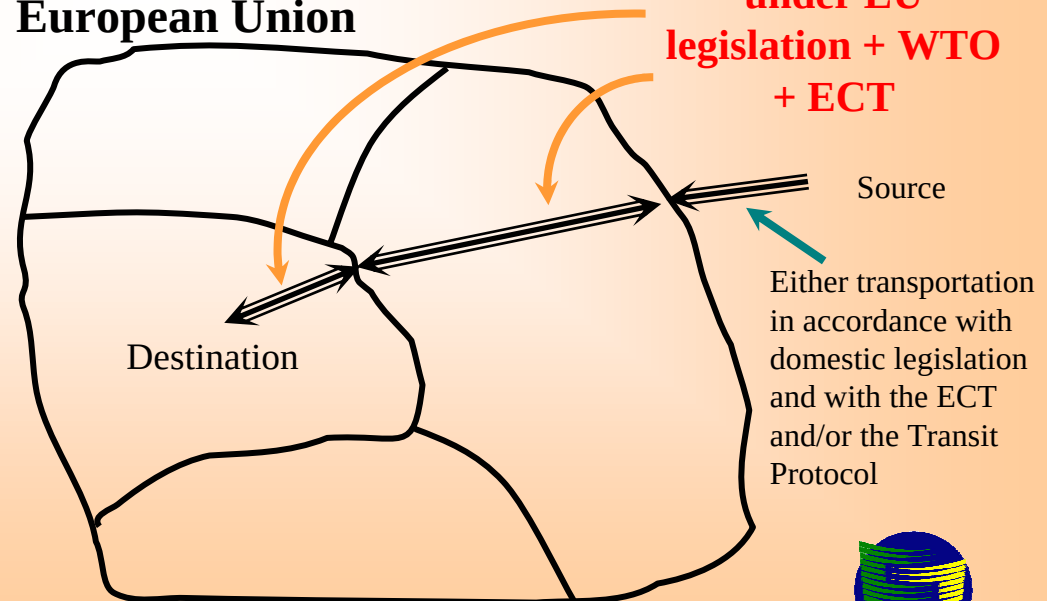
# REIO CLAUSE: LEGAL ASPECTS

European Union

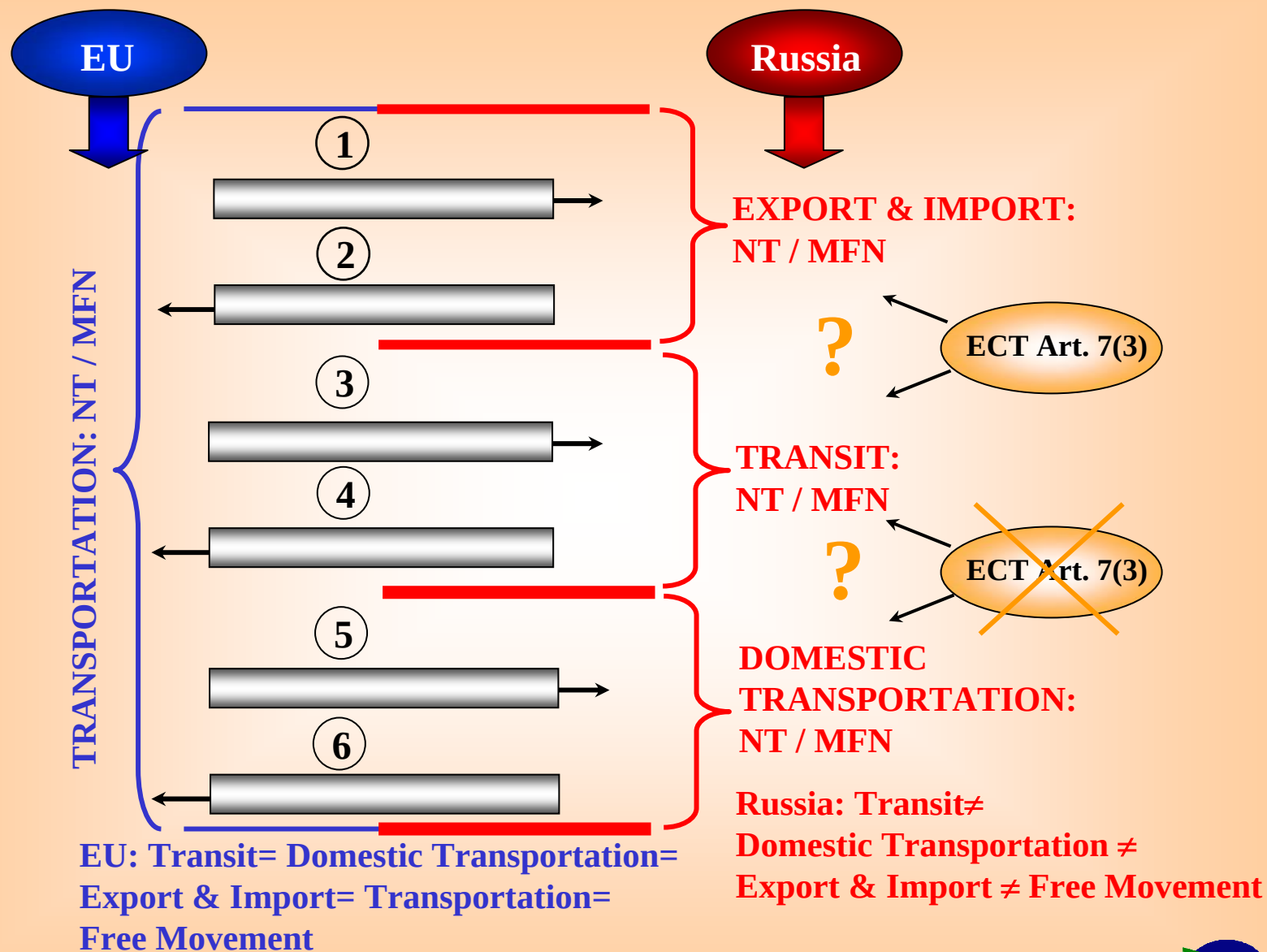


**(b) After REIO:**

European Union



# REIO CLAUSE: TRANSIT VS. TRANSPORTATION (EU/non-EU)



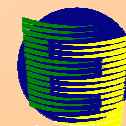
# DELIVERY POINTS OF RUSSIAN GAS IN EUROPE



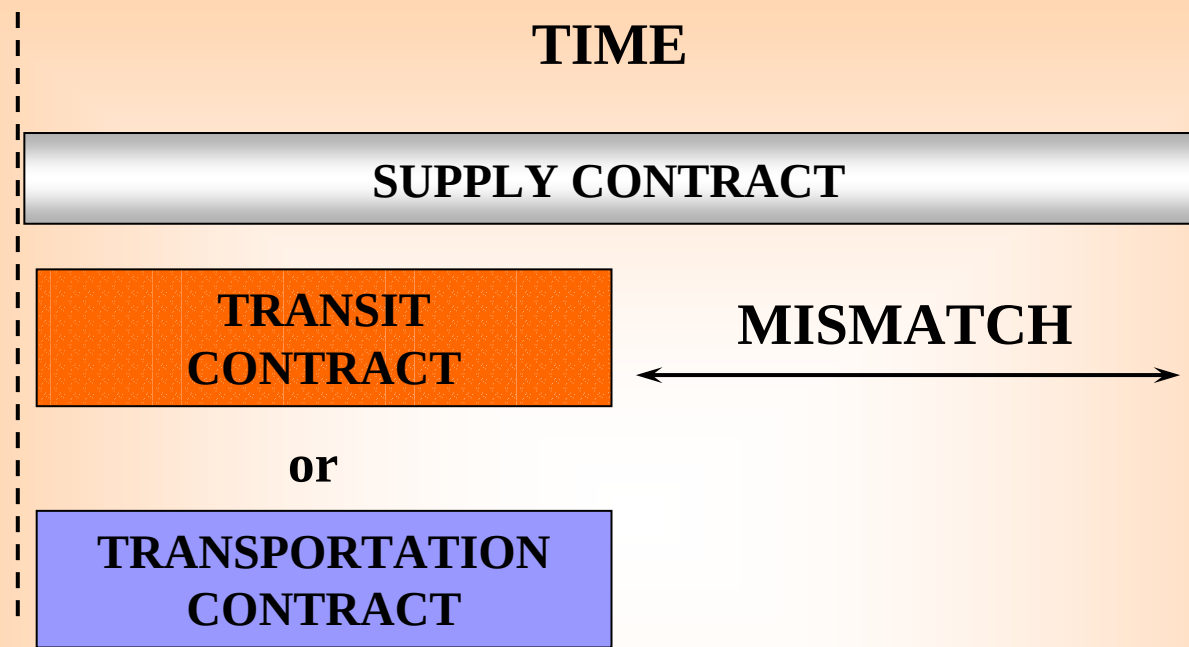
## ROLE OF LONG-TERM SUPPLY CONTRACTS IN GAS SUPPLIES TO EU MEMBER-STATES

|                                                | Italy | France | Germany | Spain | Belgium | Greece |
|------------------------------------------------|-------|--------|---------|-------|---------|--------|
| Total supplies in 2002 (BCM)                   | 72.5  | 44.2   | 94      | 23    | 17.5    | 2.1    |
| Share of imports in total supply (%)           | 80    | 96     | 82      | 99.5  | 100     | 100    |
| Share of LTC in total supply (%)               | >90   | 94     | >90     | 44    | 91      | 100    |
| Average residual duration of contracts (years) | 14    | 15     | 11      | NA    | NA      | 13     |

**Source:** ECS calculations

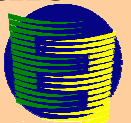


# MISMATCH BETWEEN LONG-TERM SUPPLY CONTRACT AND CONTRACTED TRANSPORTATION / TRANSIT CAPACITY



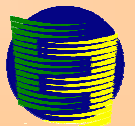
**Mismatch** between expiration dates of long term supply (delivery) contract and transit/transportation contract as integral part to fulfill the delivery contract creates a risk of non-renewal of transit/transportation contract.

**Core issue:** guarantee of access to transportation capacity within the duration of existing (in force) delivery (supply) contract.

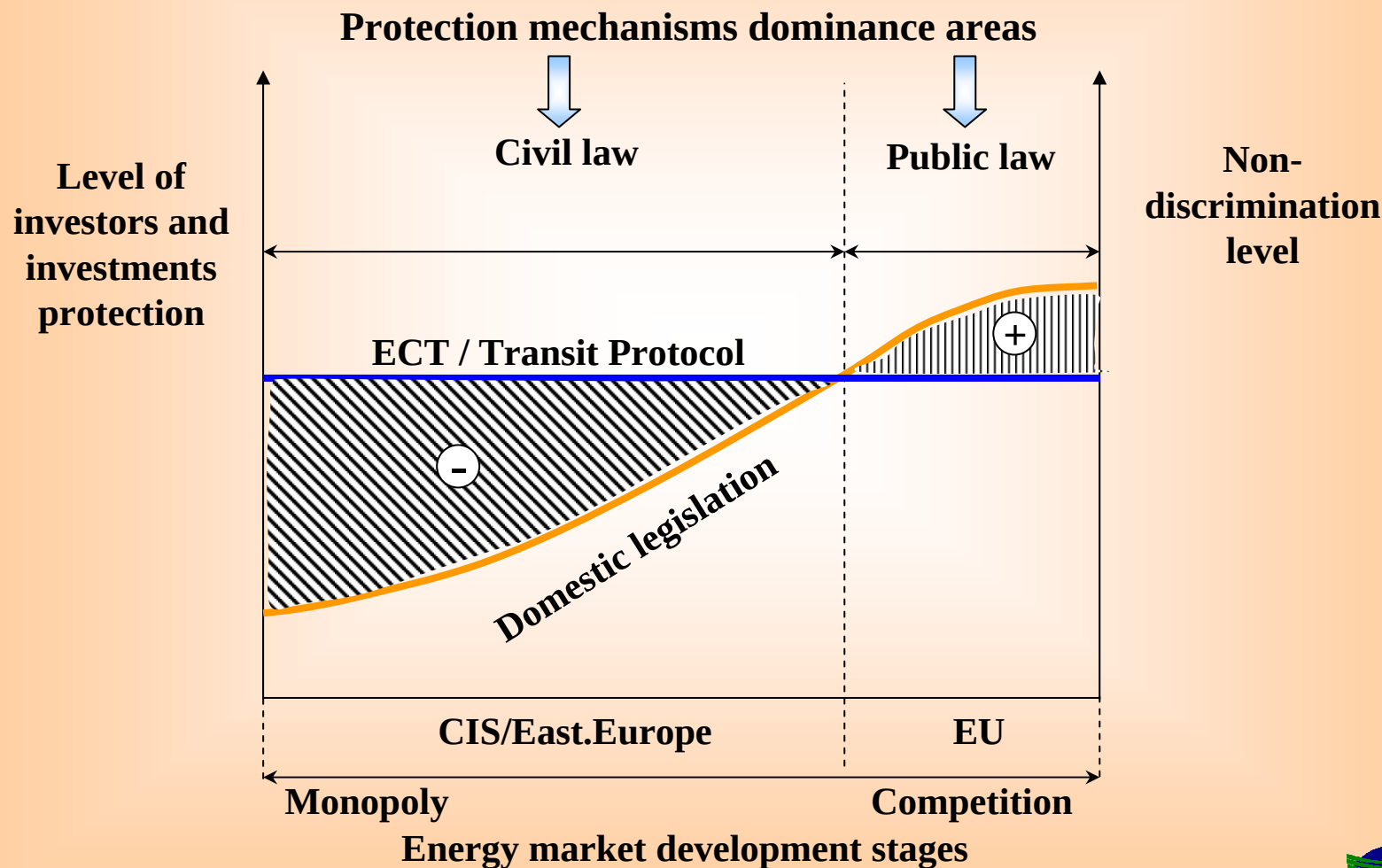


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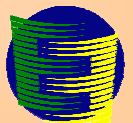
# ECT / TRANSIT PROTOCOL AS INSTRUMENTS TO FOSTER COMPETITION, NON-DISCRIMINATION, INVESTMENT



# MAIN ACHIEVEMENTS OF DRAFT TRANSIT PROTOCOL

**Strengthen the transit provisions of the ECT,  
especially:**

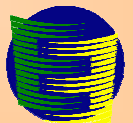
- **Definition of available capacity**
- **Rules for access to available capacity**
- **Basic understanding of tariff setting rules**
  - **cost based, including reasonable ROR, congestion management mechanism possible**
  - **open: relation between cost based and congestion management**



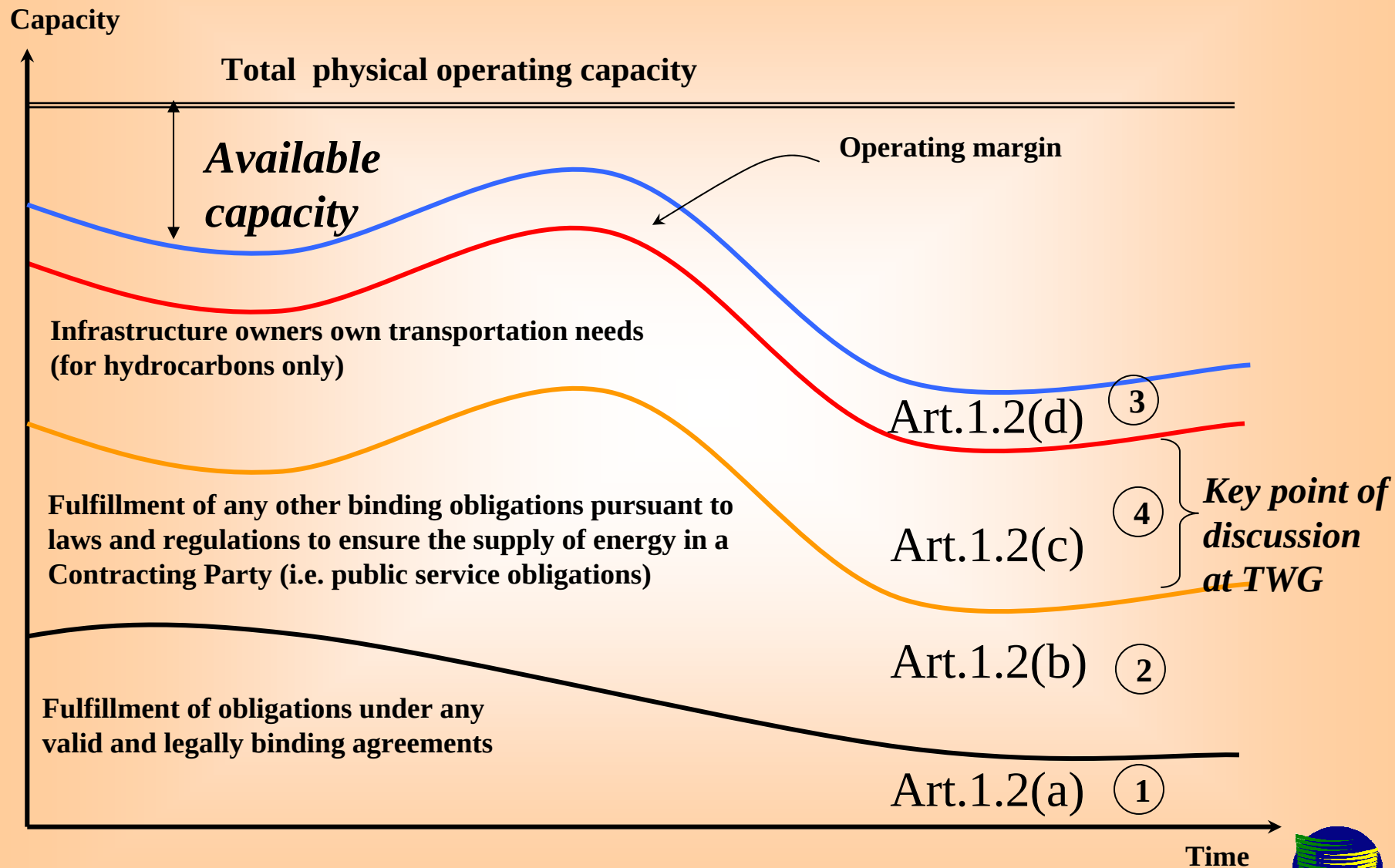
**EXAMPLE : DEFINITION OF AVAILABLE CAPACITY:  
KEY POINT FOR DISCUSSION = INVESTMENT-ORIENTED  
PROVISION**

**TP Art.1.2(c) : In the CPs where transportation and supply are not disunited, EC TP definition of AC protects for VICs (producers + shippers + pipeline-owners), within the particular time-frame, access to throughput capacity for the future oil/gas production volumes from the fields where production licenses belongs to such VICs.**

**(That is an objective investment-oriented provision based on “project financing” demands of financial institutions)**



# EXAMPLE: DEFINITION OF AVAILABLE CAPACITY (Art.1)



# **BENEFITS TO BE EXPECTED OF TRANSIT PROTOCOL IMPLEMENTATION**

- **Diminishment of risks related to transit**
- **Better financing terms**
- **Increase of competitiveness of transit supplies;**
- **Improvement of energy security (supplies+ demand+ infrastructure).**

