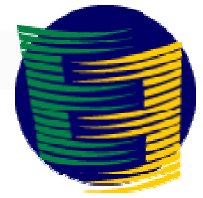


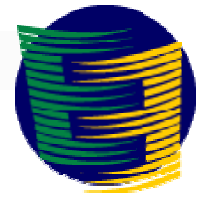
GAS STAKEHOLDER EVENT ON TRANSIT AND CROSS-BORDER CO-OPERATION

**Florian Encke
Senior Expert
Energy Charter Secretariat
Brussels, 19 June 2012**



Content

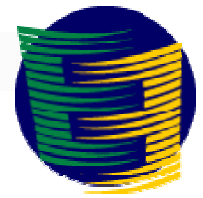
- 1. Mandate**
- 2. The challenges of energy transit**
- 3. Transit under the Energy Charter Treaty**
- 4. Transit Protocol**
- 5. Continued transit challenges**
- 6. Consultation process**



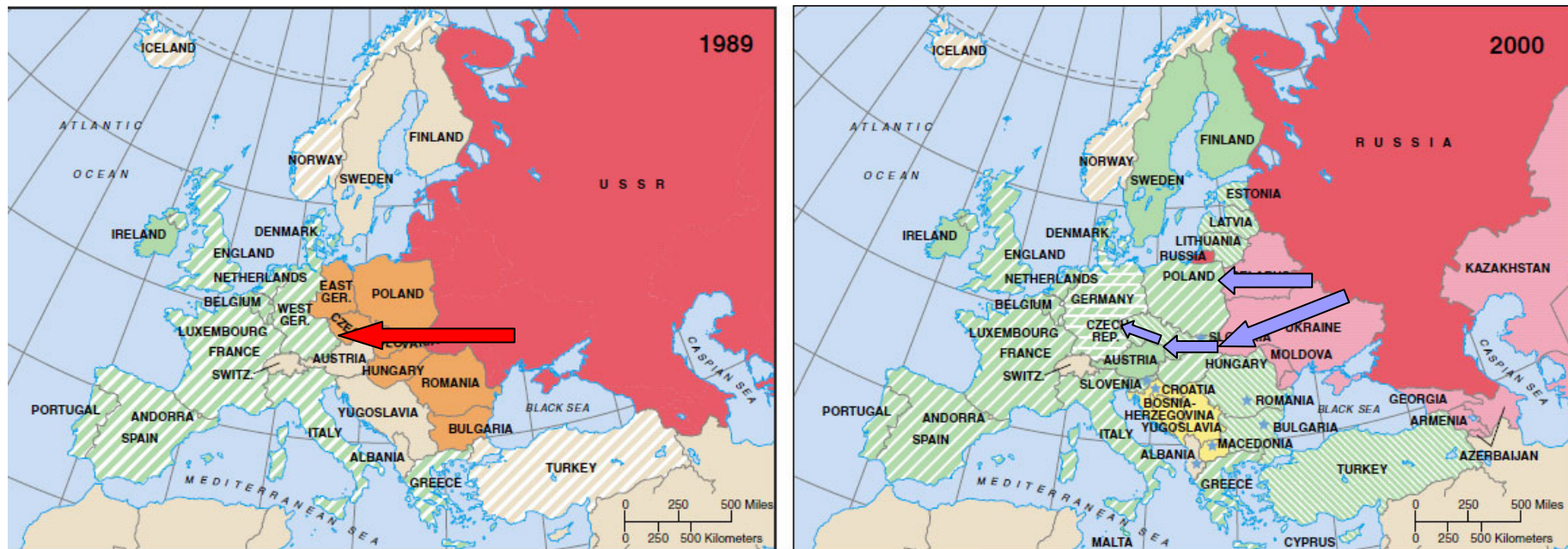
1. Mandate

Energy Charter Conference, Sofia, 29 November 2011:

- Repealed the mandate to negotiate the draft Transit Protocol on the basis of a text that emerged from negotiations and consultations in 2000-2010
- Tasked the Trade and Transit Group to conduct consultations among members and observers with regard to the **prospects for a new Protocol**, including the issues to be addressed and the convergence of positions within the constituency in this regard, consulting other stakeholders, in particular transmission-system-operators (TSO)
- Advised to take into account the original mandate for the negotiations on the Transit Protocol in CC 156 adopted on 7 December 1999.



2. The challenges of energy transit

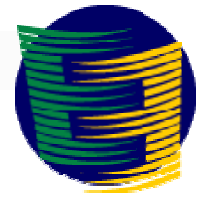


Europe: Political Changes in the 1990s
1989

- Union of Soviet Socialist Republics
- Warsaw Pact countries (excluding the USSR)
- North Atlantic Treaty Organization Countries
- European Community (formerly the EEC)

2000

- Former Republics of the USSR, now independent countries
- Russian Federation
- New European Countries resulting from reunification
- New European Countries resulting from partition
- NATO countries, 2000
- Associated with NATO / petitioned for entry
- European Union (formerly the EC)
- European Union applicant countries

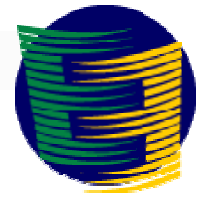


2. The challenges of energy transit

GATT

→ Freedom of transit via the routes most convenient for international transit, Art. V GATT (1947)

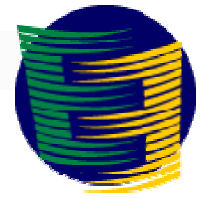
- No discrimination based on flag of vessels, place of origin, departure, entry, exit or destination, ownership of goods
- MFN treatment of like products being transported on the same routes under like conditions
- No unnecessary delays or restrictions
- No customs or transit duties
- Cost-related charges



2. The challenges of energy transit

The specifics of energy transportation:

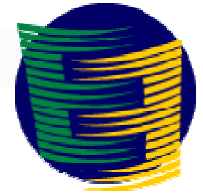
- Need for expensive, specific transport infrastructure (pipelines, grids), natural monopoly
- High up front investment
- Capacity constraints
- Security of supply of the consuming country, contractual obligations of the producing country, energy security of the transit country



3. Transit under the Energy Charter Treaty

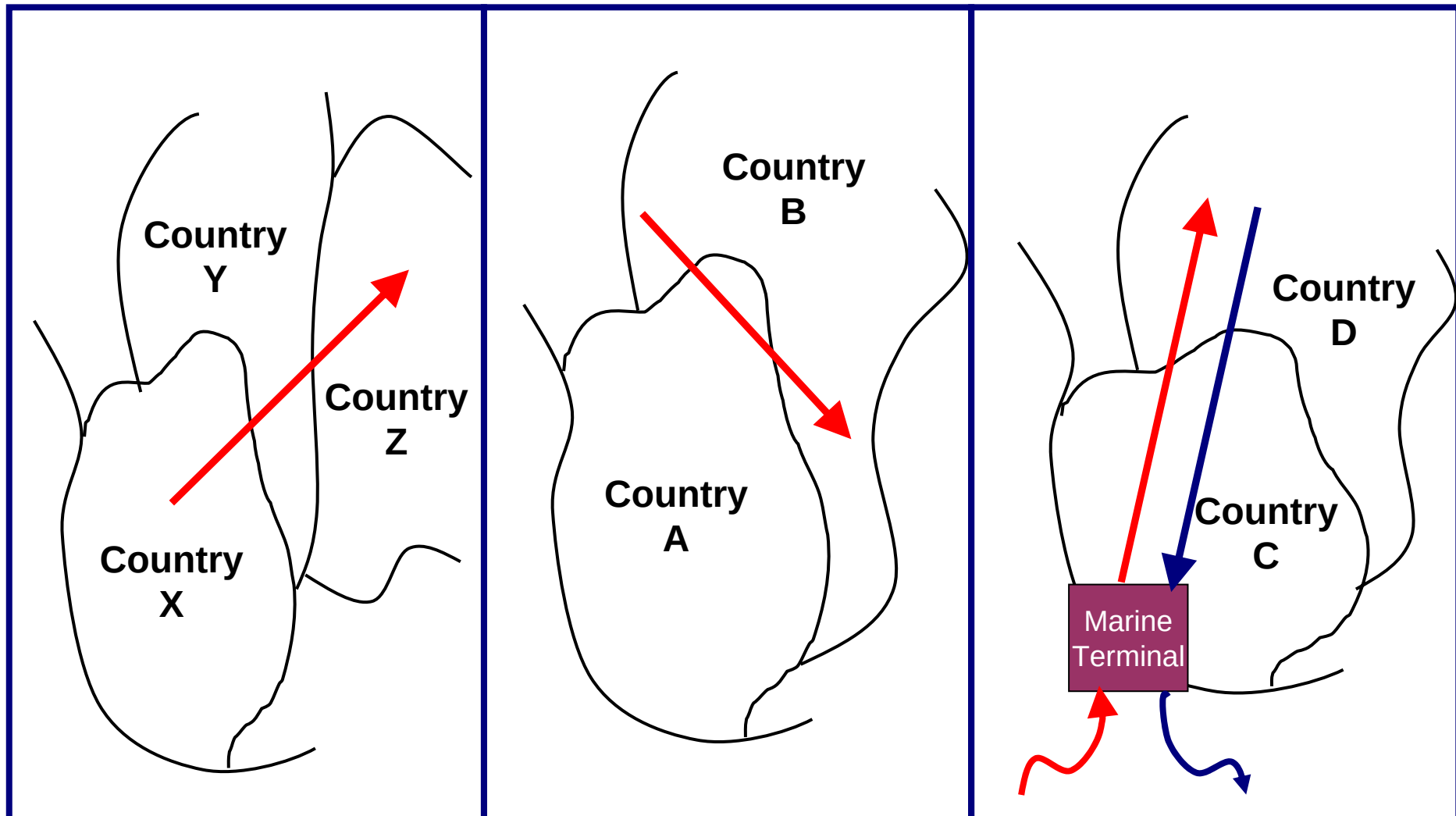
Art. 7 ECT

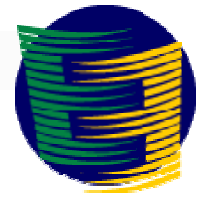
- Transit of *Energy Materials and Products (EMP)*
- Transit through fixed infrastructure
- Facilitation of transit based on non-discriminatory & transparent rules
- States to encourage co-operation of network owners/operators
- National provisions to treat EMP in transit no less favourable than EMP originating in or destined for own area
- No obstacles to the creation of new capacity
- Security of established transit flows
- Non-interruption of transit flows in case of a dispute
- Conciliation procedure for transit disputes



3. Transit under the Energy Charter Treaty

Definition of Transit

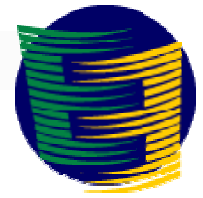




3. Transit under the Energy Charter Treaty

Model Agreements for Cross-Border Pipelines

- Work on Model Agreements in conjunction with the development of the Transit Protocol
- A Legal Advisory Task Force on Model Agreements (LATF) established by the Energy Charter Secretariat elaborated Model Agreements for:
 - **Intergovernmental Agreements (IGA)**
among the states through whose territories an identified pipeline system is to be constructed and operated
Horizontal issues concerning the pipeline infrastructure as a whole – coop., land rights, tax structures, issues relevant to the implementation of the project
 - **Host Government Agreements (HGA)**
between individual states within whose territory the pipeline system is to be realized and the project investor(s)
Vertical issues concerning the project activity within the territory of each state – governmental obligations, investor duties, relevant standards, liability, issues relevant to the implementation of the project in each specific territory



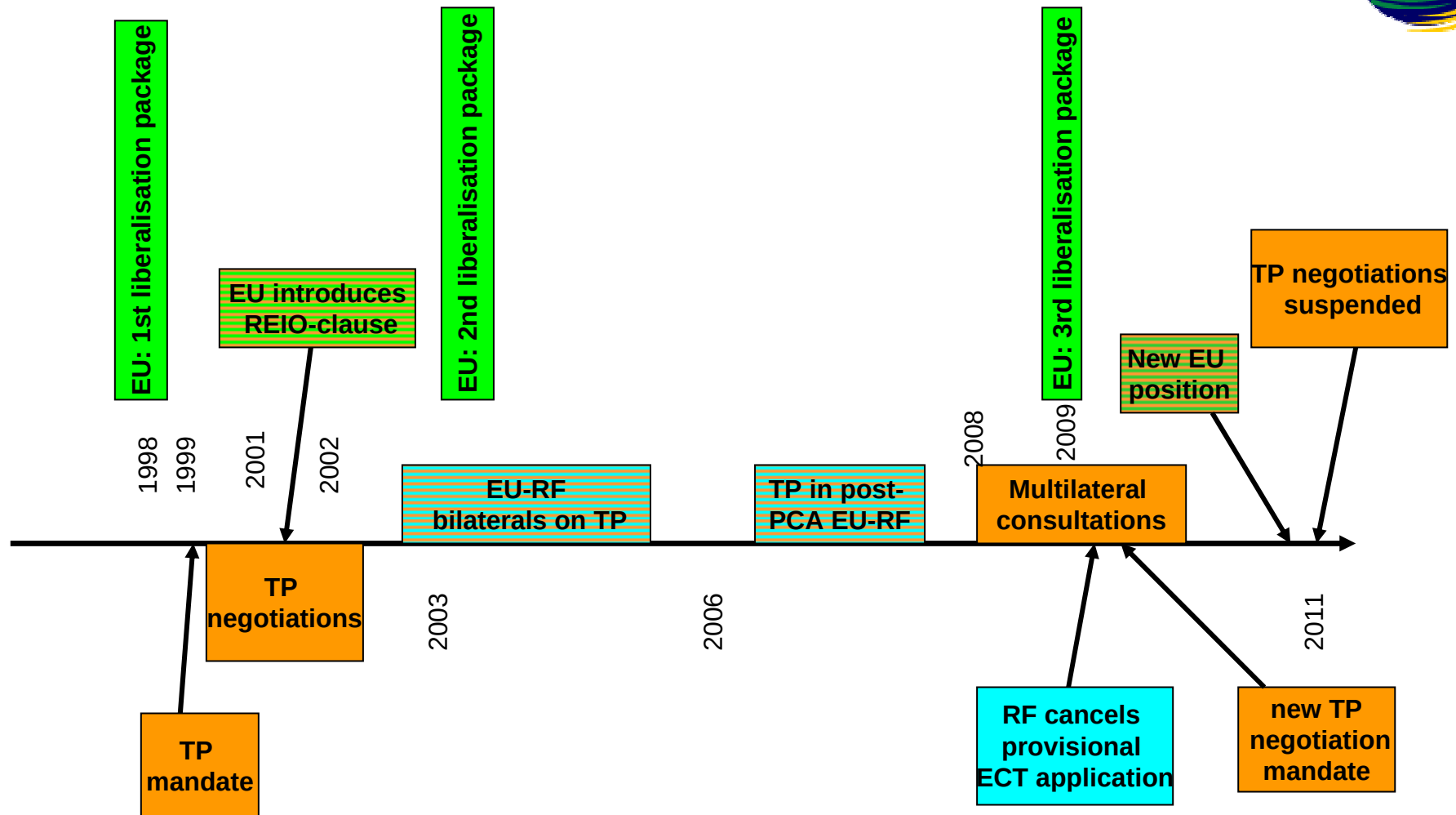
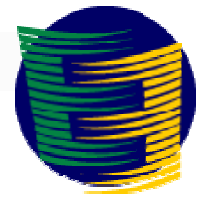
4. Transit Protocol

Transit Protocol Mandate (1999):

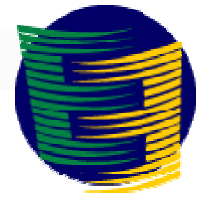
- to ensure secure, efficient, uninterrupted and unimpeded transit;
- to promote more efficient use of transit infrastructure;
- to facilitate the construction or modification of transit infrastructure.

In order to reach these objectives, basic issues to be addressed in the Transit Protocol are *inter alia*:

- sanctity of transit
- transparent and non-discriminatory access – excluding mandatory third party access
- prompt and effective dispute settlement



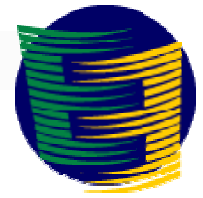
Transit Protocol negotiations 1999 - 2011



4. Transit Protocol

Provisions of the draft Transit Protocol (1):

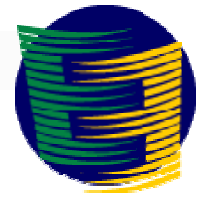
- Applies to transit and to international swaps
- Prohibition of unauthorised taking
- Utilisation of available capacity: good faith access negotiations or non-discriminatory regulation
- Long-term capacity booking
- Authorisation procedures for new capacity



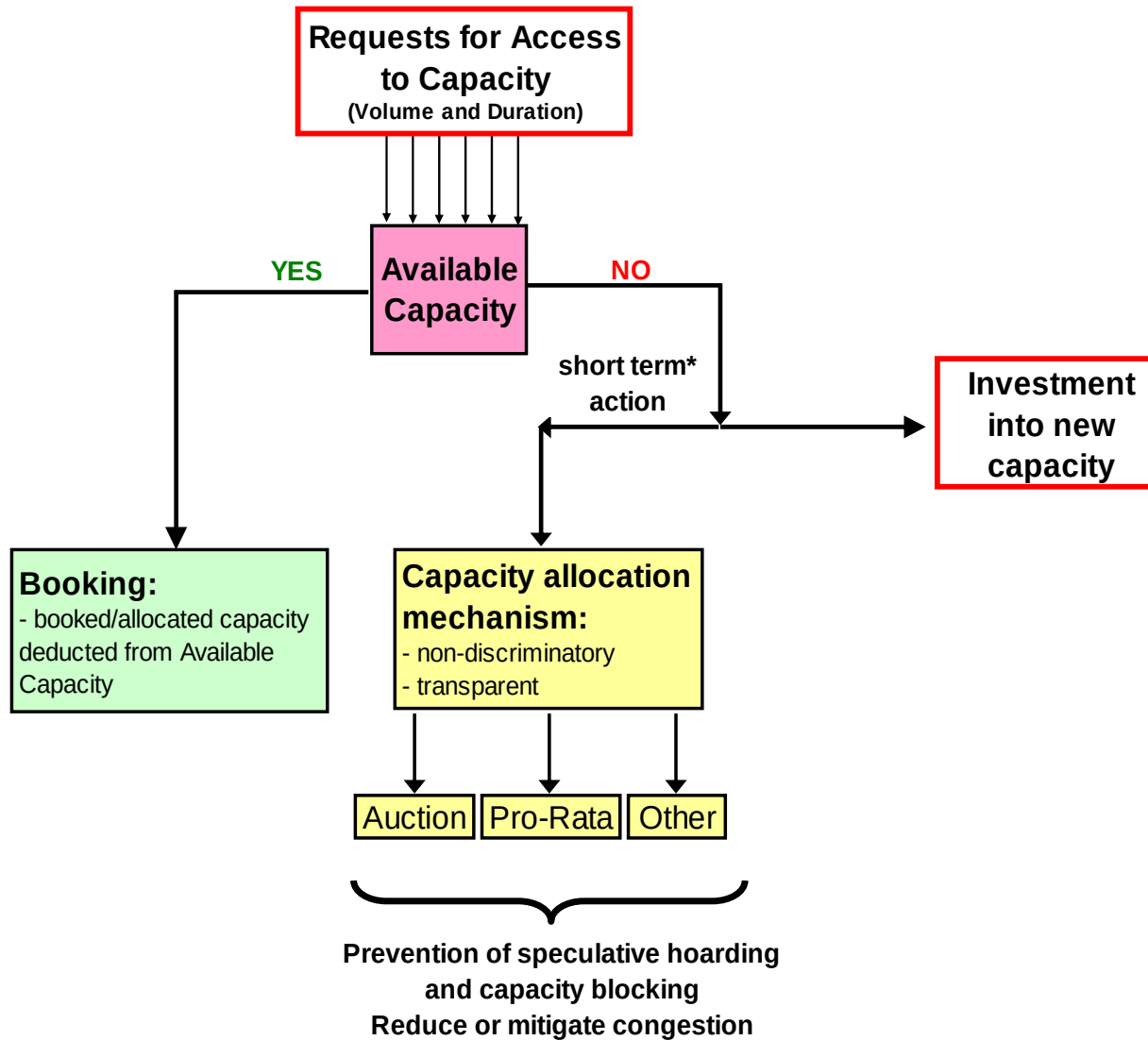
4. Transit Protocol

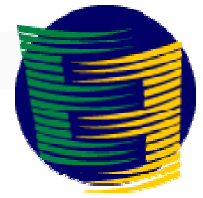
Provisions of the draft Transit Protocol (2):

- Principles for transit tariffs: cost-reflectiveness plus reasonable rate of return
- Congestion management mechanisms
- Charges, energy supplies to the transit country
- Standards, metering and measuring
- Accidental interruption
- Dispute settlement



4. TP: Mechanism for Capacity Allocation and Creation

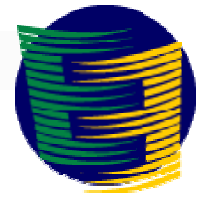




4. Transit Protocol

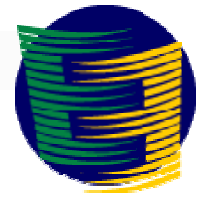
Why could TP not be agreed?

- Concerns that TP could prevent the application of the EU's internal market rules
- No transit, but transmission within EU
- Would Russia join?
- Relationship with En. Community Treaty?
- Concerns outside the EU about the “REIO-clause”
- Interests of transit countries fully reflected in the existing draft?



5. Continued transit challenges

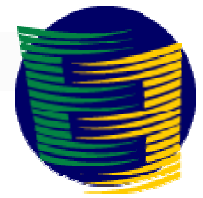
- Growing dependence of consuming countries on imported energy
- Emergence of new energy producers, often in land-locked countries
 - Increasing volumes of energy traded across borders, often involving transit
- But also new bypass pipelines



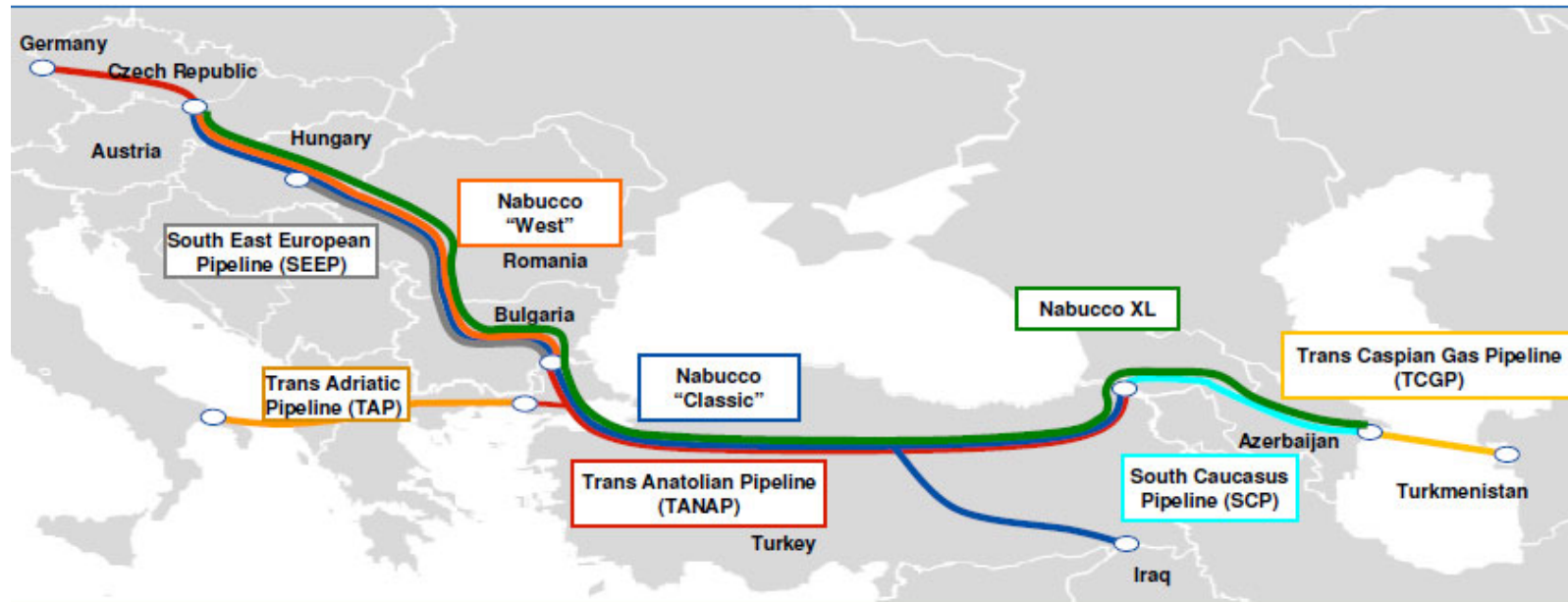
5. Continued transit challenges

Prominent calls for transit rules:

- **President Medvedev (Russia)**, 21.04.2009 – “Conceptual approach to the New Legal Framework for Energy Cooperation”: Mutual responsibility of energy consuming and supplying countries, as well as of transit states for global energy security; Annex 1 – “Elements of the Transit Agreement”
- **President Nazarbayev (Kazakhstan)**, 28.01.2011: “We are proposing our European partners to work out together and to adopt a multilateral or bilateral “Energy Charter Kazakhstan – EU: 2020”. This will guarantee reliable delivery of energy resources to the European markets and the development of pipeline systems.”
- **President Berdymukhamedov (Turkmenistan)**, May 2012: “Turkmenistan proposes to start a dialogue on the issue of transportation of energy resources, ensuring the security and reliability of their delivery, development of clear and precise principles of for the role of our states on the international energy market. (...) I consider it necessary present a joint initiative of the CIS countries for conducting such a dialogue at the next session of the General Assembly of the UNO.”
- **WTO Doha round** - trade facilitation: clarify GATT transit provisions

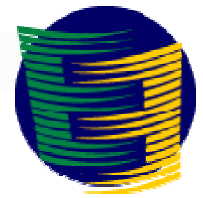


5. Continued transit challenges

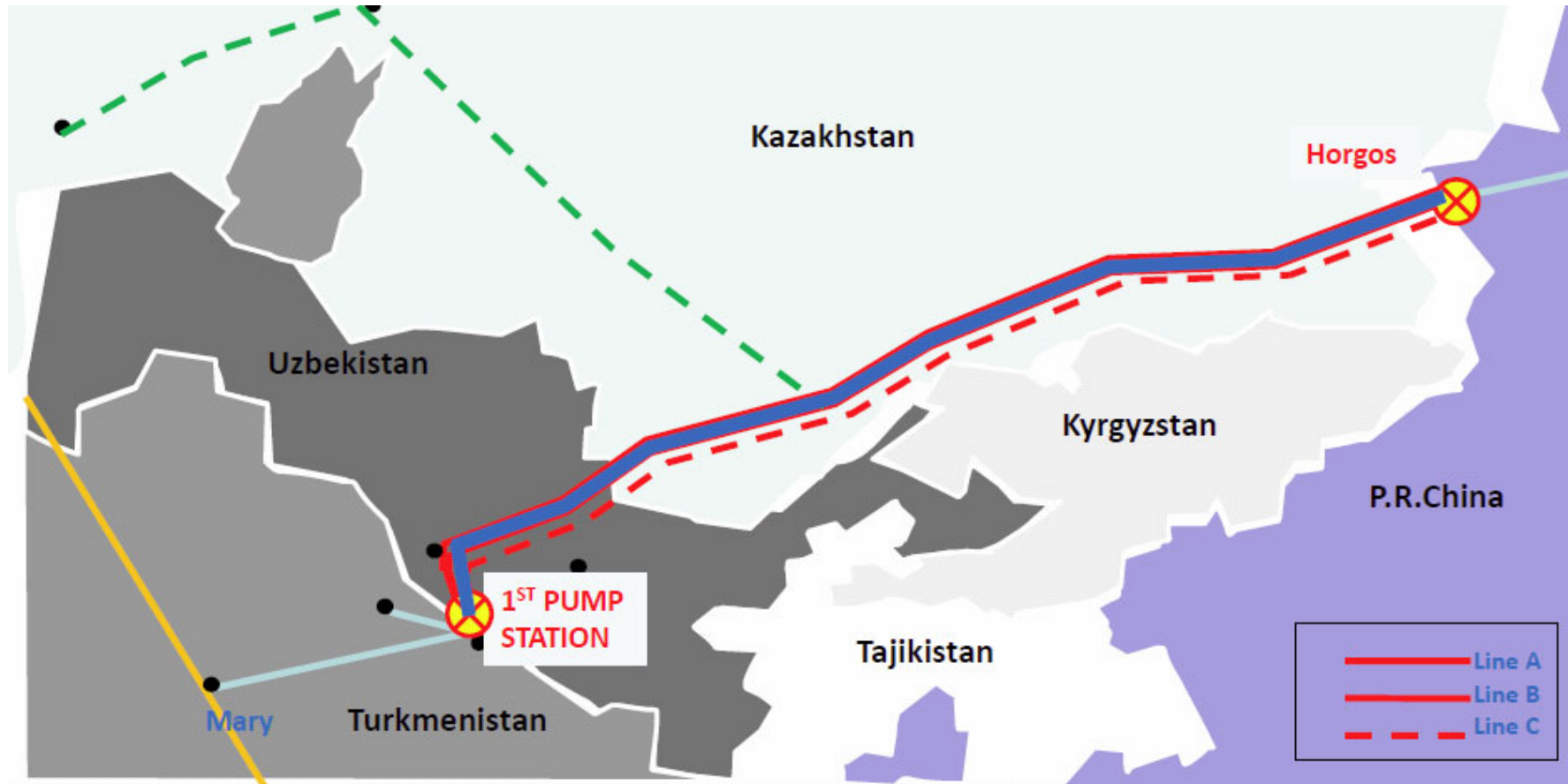


EU Southern Corridor
projects

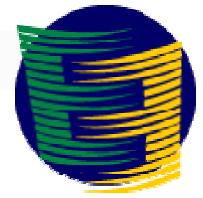
Source: RWE, Edison



5. Continued transit challenges



Central Asia – China gas pipeline
Source CNPC



5. Continued transit challenges

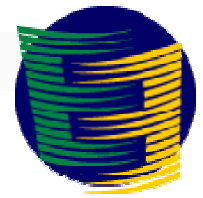


The proposed TAPI gas pipeline

TAPI

Ashgabat, December 2010





5. Continued transit challenges





4. Continued transit challenges

EU Gas Target Model

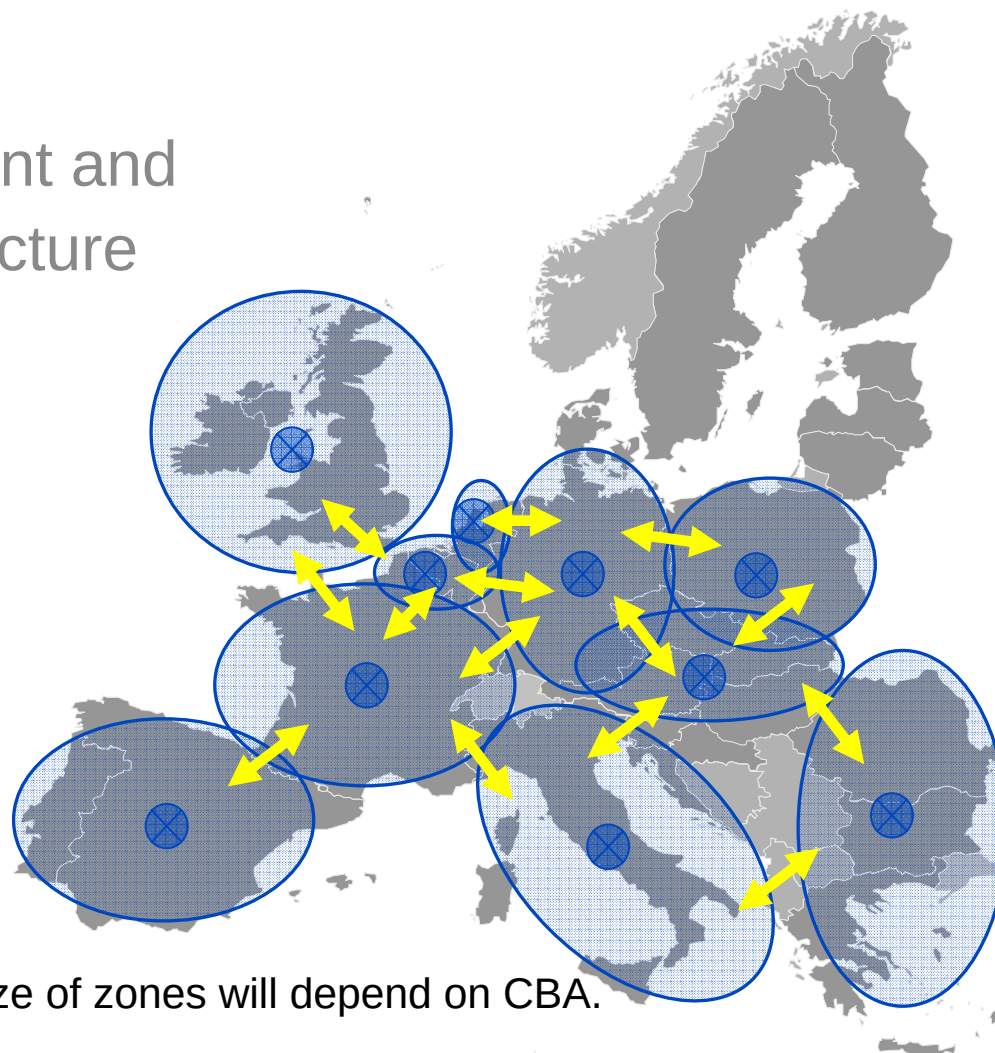
- Liquid hubs with sufficient and efficiently used infrastructure
- Functioning markets in all of Europe
- Ensure that gas flows to Europe

Source: CEER presentation
at 21st Madrid Forum



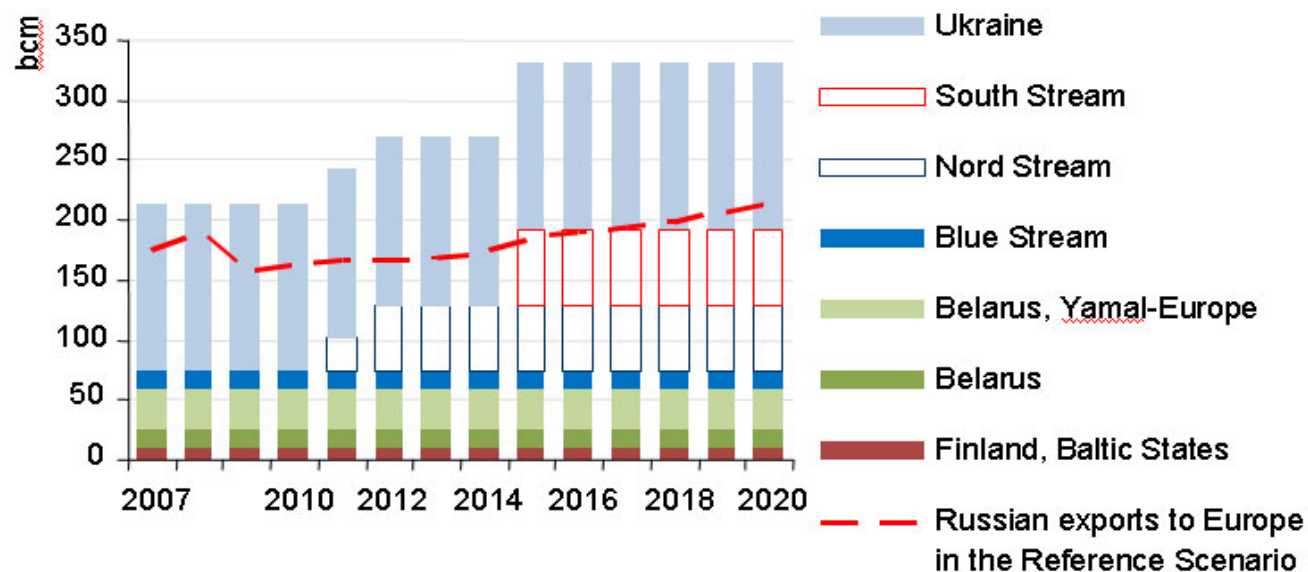
Hub

* Zones drawn for illustration. Size of zones will depend on CBA.



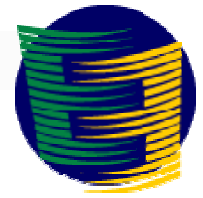


5. Continued transit challenges



Export capacity is ample now – especially with the recent slump in European demand – but new capacity could be needed to meet rising demand by the end of the 2010s

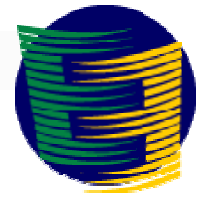
© OECD/IEA - 2009



6. Consultation process

The Energy Charter's modernisation agenda

- Transit Protocol, possibly with more consideration of regional specificities and concrete projects
- Operational issues (transparency, standards)
- Emergency response, conciliation for transit disputes



6. Consultation process

2011

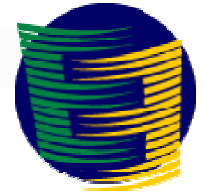
Is there support to expand the TP to include new issues?

Interest in

- Provisions to accelerate authorisation procedures
- Platform for exchange of best practices with transportation tariffs and services
- Further elaboration on tariffs, methodologies, benchmarks
- Acknowledgement of role of Long Term Contracts in declaratory form
- Enlargement of scope to include cross-border transportation

Agree on more detailed provisions in sub-agreements in a regional context?

- Whole constituency preferred



6. Consultation process

2012

28.03.	<i>Electricity Stakeholder Event</i>
23.05.	Trade and Transit Group
19.06.	<i>Gas Stakeholder Event</i>
26.09.	<i>Oil Stakeholder Event</i>
09.10.	Trade and Transit Group
11/12	Energy Charter Conference