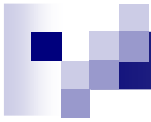


OIL STAKEHOLDER EVENT ON TRANSIT AND CROSS-BORDER CO-OPERATION

**Florian Encke
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Energy Charter Secretariat
Brussels, 26 September 2012**



Content

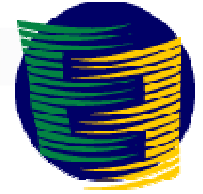
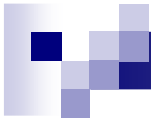
- 1. Mandate**
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1. Mandate

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- Repealed the mandate to negotiate the draft Transit Protocol on the basis of a text that emerged from negotiations and consultations in 2000-2010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.



2012

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



2. 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*:

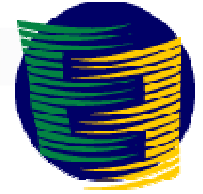
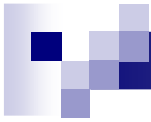
- sanctity of transit
- transparent and non-discriminatory access – excluding mandatory third party access
- prompt and effective dispute settlement



2. Transit Protocol

Provisions of the draft Transit Protocol (1):

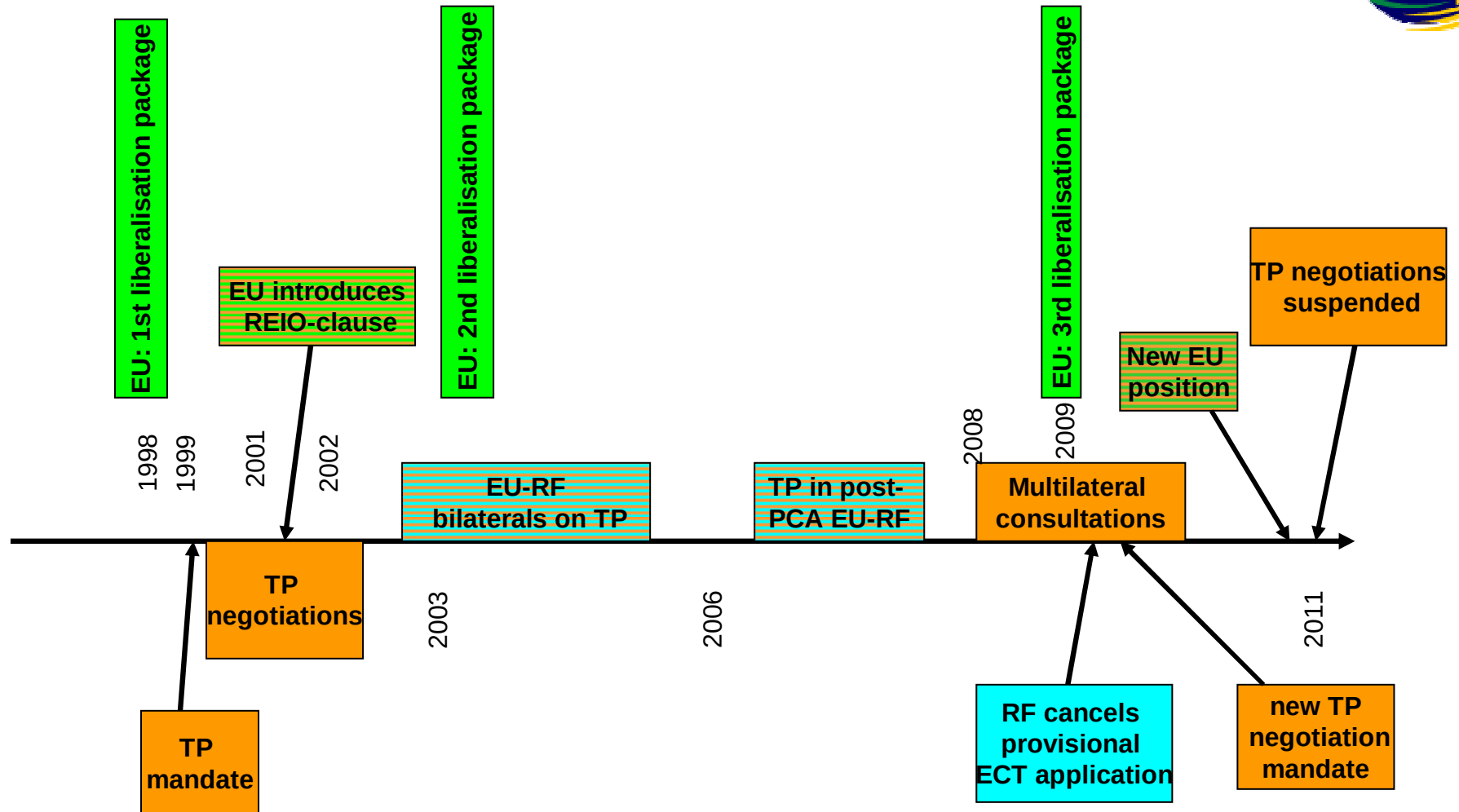
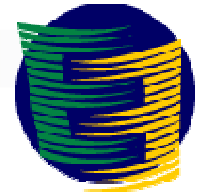
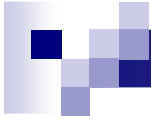
- Applies to transit and to international swaps
- Prohibition of unauthorised taking
- Utilisation of available capacity: good faith access negotiations or non-discriminatory regulation
- Long-term capacity booking
- Authorisation procedures for new capacity



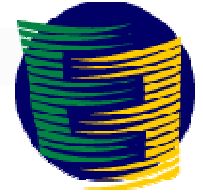
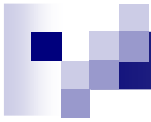
2. Transit Protocol

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



Transit Protocol negotiations 1999 - 2011



3. New challenges

Cross-border trade

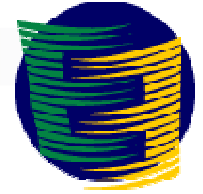
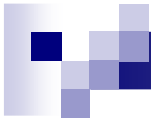
- Growing dependence of consuming countries on imported energy
- Emergence of new energy producers, often in land-locked countries
 - Increasing volumes of energy traded across borders, often involving transit
- But also new bypass pipelines



3. New challenges

Prominent calls for new agreements on energy transit/infrastructure

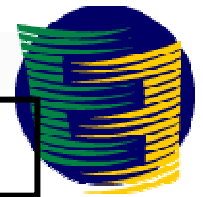
- Dec. 2008: UNGA Res. 63/210 on Reliable and stable transit of energy and its role in ensuring sustainable development and international cooperation, sponsored by Turkmenistan
- April 2009: President of Russia, D. Medvedev, Conceptual approach to the new legal framework for energy cooperation, with elements for a Transit Agreement
- Jan 2011: President of Kazakhstan, N. Nazarbayev, calls for a new instrument to ensure the stability of supplies of energy resources and the development of pipeline systems.
- May 2012: G8, Camp David: "To facilitate the trade of energy around the world, we commit to take further steps to remove obstacles to the evolution of global energy infrastructure; to reduce barriers and refrain from discriminatory measures that impede market access"
- WTO Doha round - trade facilitation: clarify GATT transit provisions



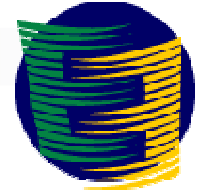
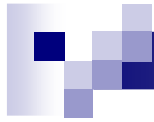
3. New challenges

Direction for the Stakeholder Consultations:

- To assess scope for a new instrument on transit and cross-border energy trade
 - to benefit the construction and operation of transport infrastructure for electricity, gas and oil
 - To include new regions working on integrated markets

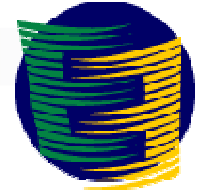


Conditions for infrastructure development	Energy Charter's response
Stable, transparent energy policies Demand-supply balance	Policy forum for coordination
Non-discrimin. rules for energy trade	Yes, by reference to WTO
Joint planning of infrastructure	No, but cooperation of TSOs, Model Agreements
Common regulatory framework	Common rules, no regulation, toolbox
Common market structure?	No mandatory TPA or unbundling
Access to capital	Parties endeavour to provide the better of national treatment or MFN
Specific rules on transit	Freedom of transit, Art. 7 ECT Non-discrimination, facilitation, security of transit Draft Transit Protocol
Transparent, non-discriminatory and swift authorisation procedures	No obstacles to new capacity creation non-discr. authorisation procedures
Access to infrastructure Congestion management	Common principles: transparent, non-discriminatory
Tariffs, return on investment, Government charges	Common principles: cost based, reasonable rate of return Negotiated and regulated
Technical standards, grid codes	Envisaged in draft Transit Protocol
Investment protection	Binding provisions
Measures to prevent and address emergency situations	Conciliation, under development



4. Transport of oil by pipeline

- World oil trade is dominated by tanker shipments. Only 20 % of oil imports to the EU arrive by pipeline (2009)
- Oil pipelines are common in landlocked countries in particular



4. Transport of oil by pipeline

Groups of legal systems governing oil pipelines in the Energy Charter constituency

- Countries whose main oil pipeline system is part of the former integrated Druzhba system
 - Strong state influence, natural monopoly legislation and regulation
- Crude oil exporting and transit countries which built new export systems (CPC, BTC, Baku-Supsa etc.)
 - Projects typically governed by project-specific legislation, IGAs and HGAs
- Crude oil importing countries with inland refineries, where pipeline is more economic (TAL, (CEL), SPSE, IKL...)
 - Not regulated, governed exclusively by competition legislation