

**ENERGY CHARTER
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Related documents: CC 173, RD 4 (ECC of 29 06 2000)

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Review of Non-conforming measures with respect to privatisation

[The Energy Charter Conference at its 5th Meeting held on 29 June 2000 noted] the review of the group of non-conforming measures with respect to privatisation. With respect to this review, the Conference adopted the Conclusions attached at [Annex.]

Keywords: Privatisation Exceptions, Non-Conforming Measures, Azerbaijan, Belarus, Bulgaria, Hungary

**Conclusions with respect to the Review of Privatisation Exceptions
conducted by the Investment Group**

[as adopted by the Energy Charter Conference
at its 5th Meeting held on 29 June 2000]

The Charter Conference,

having heard the report from the Investment Group on exceptions with respect to privatisation;

mindful that while the Energy Charter Treaty contains a political commitment to develop open and competitive markets, no Contracting Party/Signatory is under any obligation to privatise entities in the energy sector;

recalling that the new measures related to the process of privatisation would be covered by the explicit political understanding on how to handle first stage privatisation for countries listed in Annex T;

NOTED

- a) that during 1998 and 1999 the process of privatisation, particularly in economies in transition, was rapidly developing and resulted in adoption of a number of new laws and regulations affecting the conformity of the measures with the national treatment standard;
- b) that as a consequence of that development, since the last review of privatisation exceptions, Signatories/Contracting Parties have notified 9 new exceptions which essentially increased the level of non-conformity with the national treatment principle. With the exception of newly notified exceptions on re-sale of shares of already privatised companies, the other non-conforming measures may be considered to have no significant impact on privatisation of energy industries;
- c) that as a result of discussion in the June 2000 Investment Group, Azerbaijan and Hungary withdrew their notified non-conforming measures in respect of equal bids in privatisation of enterprises considering that their maintenance would signal that discriminatory action might be envisaged;

CONCLUDED

- a) that Belarus and Bulgaria were invited to reconsider their positions with respect to notified entries, in particular taking into account that:
 - there had been no extensive use of vouchers in privatisation of energy industries;
 - the Investment Group had previously agreed that reservation of a minority of shares in a privatised enterprise to particular categories of investors, employees, customers or small shareholders, or preferential terms given to such categories, are not regarded as contravening the national treatment standard provided there is no legal

discrimination against members of such categories that are nationals or legal entities of other Contracting Parties;

- b) that the Investment Group was invited to supplement the analysis of the privatisation exceptions with information on any reliance on those exceptions in energy sector privatisations in the spirit of the principles agreed in the Investment Group.