

# Article 7(1) – Transit

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## Notes and General comments regarding the whole Article

<b>Final Act (17/12/94)</b> <i>Declaration 3 - With respect to Article 7</i>	<b>CONF 104 (Text for adoption) (14/09/94)</b> <i>Declaration 2 - With respect to Article 7</i>
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The **European Community** and its **Member States** and **Austria, Norway, Sweden and Finland** declare that the provisions of Article 7 are subject to the conventional rules of international law on jurisdiction over submarine cables and pipelines or, where there are no such rules, to general international law.

They further declare that Article 7 is not intended to affect the interpretation of existing international law on jurisdiction over submarine cables and pipelines, and cannot be considered as doing so.

<b>ECT 7 [CONF 96] (17/03/94)</b> [Article 8] - Transit
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**Norway** waiting reserve. **Norway** accepts that the new definition of Area in Article 1 is helpful in this context but points out that the issues covered by Article 8 do not fall within the sovereign rights or jurisdiction exercised by coastal states over their Continental Shelf or exclusive economic zones. For the purpose of clarity **Norway** therefore suggests using the word “territory” instead of “Area” in the definition of Transit in paragraph (10)(a), and whenever the word is used in this Article.

**Canada** reserve on paragraphs (5), (6) and (7) pending a solution to the pre-emption of its regulatory authorities' statutory powers to interrupt energy flows.

<b>ECT 6 [CONF 82] (20/12/93)</b> <b>ECT 5 [CONF 72] (11/10/93)</b> <b>ECT 4 [CONF 64] (07/07/93)</b> [Article 8] – Transit
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Subject to discussion in Plenary on Article 36, **Russian Federation** noted that there might be a need for transitional provisions covering Article 8, in relation to transit between CIS countries.

**Norway** waiting reserve. **Norway** accepts that the new definition of Area in Article 1 is helpful in this context but points out that the issues covered by Article 8 do not fall within the sovereign rights or jurisdiction exercised by coastal states over their Continental Shelf or exclusive economic zones. For the purpose of clarity **Norway** therefore suggests using the word “territory” instead of “Area” in the definition of Transit in paragraph (10)(a), and whenever the word is used in this Article.

**USA** supported by **Japan** suggests explicit exclusion of maritime transport from Article 8 (as well as from the Charter Treaty as a whole) - see footnote 8.12.

**Canada** contingency reserve pertaining to paragraphs (5), (6) and (7) pending a solution to the pre-emption of its regulatory authorities' statutory powers to interrupt energy flows.

**ECT 3 [CONF 60] (01/06/93)**  
[Article 8] - Transit

Norway general reserve (see footnote 8.4).\*

Canada contingency reserve pertaining to paragraphs (3), (5), (6) and (7).

**ECT 2 [CONF 56] (01/05/93)**  
[Article 8] – Transport and Transit  
*Ministerial Declaration 5- To Article 8*

Norway and Canada general reserve.

**Ministerial Declaration 5** : Ministers recognise that the transit of Energy Materials and products may require transport and port facilities other than those detailed in paragraphs (4), (6) and (7) and that the terms of access to and use of such facilities may unfairly impede trade and transit of Energy Materials and Products. They invite the Charter Conference to consider whether the provisions of paragraphs (1) and (3) of Article 8 are sufficient safeguard against such possible impediments or whether the provisions of paragraphs (4), (6) and (7) should be extended perhaps through Protocols on coal and other energy sectors to cover any other facilities dedicated to the transport of Energy Materials and Products if such extension can be achieved without prejudicial effects on the trade and transport of non-energy materials and products.

**(Compromise text) ECT 1 [CONF 50] (15/03/93)**  
*Ministerial Declaration 4 - To Article 8*

Ministers recognise that the transit of Energy Materials and Products may require transport and port facilities other than those detailed in paragraphs (4), (6) and (7) and that the terms of access to and use of such facilities may unfairly impede trade and transit of Energy Materials and Products. They invite the Charter conference to consider whether the provisions of paragraphs (1) and (3) of Article 8 are sufficient safeguard against such possible impediments or whether the provisions of paragraphs (4), (6) and (7) should be extended perhaps through Protocols on coal and other energy sectors to cover any other facilities dedicated to the transport of Energy Materials and Products if such

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\* *Ed. note:* Footnote 8.4 states:

“It was agreed that in relation to paragraph (4), the terms of that paragraph should apply only within the territory of the Contracting Party and that the substance of article 79 of the Convention of the Law of the Sea should be made applicable to the Continental Shelf. In addition it was agreed that when the Law of the Sea Convention enters into force Contracting Parties will give serious consideration to limiting the field of application of Article 8 in the Charter Treaty and to leaving pipelines crossing the Continental Shelf to the Law of the Sea Convention. In Norway’s opinion the Charter Treaty should not interfere with, the regime relating to submarine cables and pipelines on the Continental Shelf already established in international law. The territorial scope of application of Article 8 should therefore be limited to land territory, internal waters and territorial sea.

Legal Sub-Group was asked to draft appropriate provisions. Insofar as coastal states possess no rights in relation to the Continental Shelf relevant to the obligations in a particular paragraph of this Article, that paragraph should not apply to pipelines and cables on the Continental Shelf. Insofar as the coastal states have rights relating to the Continental Shelf relevant to the obligations of any particular paragraph, then the obligations should apply in relation to pipelines and cables on the Continental Shelf.

Informal discussion is to continue.”

extension can be achieved without prejudicial effects on the trade and transport of non-energy materials and products.

The Contracting Parties declare that it is their common understanding that the provisions of the Energy Charter Treaty do not oblige any Contracting Party to introduce mandatory Third Party Access.

**BA-37 (01/03/93)**

[Article 11] – Transport and Transit  
*Ministerial Declaration - To Article 11*

After resequencing paragraphs in Article 11, Russian Federation footnote 11.14 from BA-31 can not be easily referred to any text in the draft of this Article. Russian Federation agreed to reconsider it in the light of new proposal on this Article.

During the WG II meeting on 22-27 February 1993 it was discussed whether the BA should contain any provisions which address the problems of emergency situations (not only for oil and gas, but also for electricity) since Article 27 does not deal with short-term breakdowns. CIS countries in particular supported this idea. At the same time it was recognised that this is complex, mostly unexplored territory, in which problems arise such as repair obligations, sharing of costs, distribution of remaining flows etc. The OECD countries were invited to make available, if possible, texts of contracts or agreements dealing with these problems. The interested CIS countries were invited to consider draft language.

The WG II Chairman will suggest to the Chairman of the Charter Conference how to proceed with this issue. For ease of future handling, the two draft texts for a new paragraph proposed by certain CIS countries are recorded below:

a) Armenia and Kazakhstan proposal: “In cases of breakdown in the energy transport network, the Contracting Party on whose territory the breakdown occurred shall undertake all necessary measures to eliminate its consequences as promptly as possible, without awaiting the results of analysis of the reasons for the breakdown. The costs of rectifying the consequences of the breakdown shall be shared between the parties to the transit in proportions determined in specific agreements which shall be concluded between the parties. When the volume of energy in transit is reduced, whatever the reasons for this reduction, the remaining volume shall be shared between all the parties using the transport network in accordance with specific agreements which shall be concluded between the parties to the transit.”

b) Ukraine proposal: “In cases of breakdown in the energy transit network, the Contracting Parties shall without delay undertake all necessary measures to eliminate the breakdown and its consequences. The costs for the parties of eliminating breakdowns and their consequences, operational concertation and allocation of transit supplies between parties concerned during the time of breakdown, shall be determined by multilateral and bilateral agreements.”

**Canada, Norway, Japan and Azerbaijan** general reserve on whole Article.

**Ministerial Declaration to Article 11:** [Ministers recognize that the transit of Energy Materials and Products may require transport and port facilities other than those detailed in paragraphs (4), (6) and (7) and that the terms of access to and use of such facilities may [unfairly] impede trade and transit of Energy Materials and Products. They invite the Charter Conference to consider whether the provisions of paragraphs (1) and (3) of Article 11 are sufficient safeguard against such Possible impediments or whether the provisions of paragraphs (4), (6) and (7) should be extended to cover any other facilities dedicated to the transport of Energy Materials and Products if such extension can be achieved without prejudicial effects on the trade and transport of non-energy materials and products.]<sup>1</sup>

**BA-35 (09/02/93)**  
[Article 11] - Transport and Transit

After resequencing paragraphs in Article 11, Russian Federation footnote 11.15 from BA-31 can not be easily referred to any text in the draft of this Article. Russian Federation agreed to reconsider it in the light of new proposal on this Article.

**Canada, Norway, Japan and Azerbaijan** general reserve on whole Article.

There are three major issues to be addressed when finalising this Article:

- how to take forward matters indicated in footnote 11.9 and 11.15,
- whether Polish idea on solving disputes under para (6) can be expressed in an acceptable form.
- following the Armenian proposal at footnote 11.16 in Room Document 13 of 3 February 1993, whether BA should contain any provisions which address the problems of emergency situations since Article 27 does not deal with short-term breakdowns.

**BA-31 (21/12/92)**  
**BA-26 (25/11/92)**  
**BA-22 (21/10/92)**  
**BA-15 (12/08/92)**  
**BA-14 (24/06/92)**  
[Article 11] – Transport and Transit

**Canada, Australia, Norway, Japan and Azerbaijan** general reserve on whole Article.

Work has been completed on this Article in WGII and is being referred to Plenary.

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<sup>1</sup> General scrutiny reserve. Chairman will consider whether the notion of a coal protocol might be introduced in the text.

**BA 13 (19/06/92)**  
[Article 11] – Transport and Transit

**Canada, Australia, Norway, Japan and Azerbaijan** general reserve on whole Article. Chairman will return on this at conclusion of discussion.

Work has been completed on this Article in WGII and is being referred to Plenary.

**BA 12 (09/04/92)**  
[Article 11] - Transport and Transit

On a basis of the first reading of this Article at the WG II meeting on 9 April 1992, the Chairman invited delegations of Austria, Australia, Norway, Russian Federation and USA chaired by the Secretariat for redrafting. The working sub-group will meet as soon as possible.

**Canada** general reserve on whole Article.

**BA 6 (21/01/92)**  
Article 11 - Transport and Transit

Completely rewritten former Article 11 on "Freedom of Movement".

**BA 4 (31/10/91)**  
Article 11 - Freedom of Movement

New text based on Austrian and EC suggestions. Former subpara (c) deleted and subpara (d) renumbered as para (2).

**BP 2 (11/09/91)**  
*Explanatory Memorandum*

Article 11 provides for (a) the facilitation of transit of Energy Materials and Products through the Territory of Contracting Parties (Source: GATT Article V); (b) the limitation of fees and charges to the approximate cost of Article 11 services rendered, including a reasonable commercial rate of return, and the avoidance of fiscal protection of domestic products (Source: GATT Article VIII); and (c) the absence of prohibitions or restrictions (other than duties, taxes and other charges) on imports and exports from and to any Contracting Party (Source: GATT Article XI). Under paragraph (d), Contracting Parties' security of supply is protected.

## Article 7.1

<b>ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94)</b>  Article 7.1 - Transit	<b>Interim text (25/06/94) Interim text (20/06/94) Compromise text [CONF 98] (22/04/94)</b>  Article 8.1 - Transit	<b>ECT 7 [CONF 96] (17/03/94) ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) ECT 4 [CONF 64] (07/07/93)</b>  [Article 8].1 - Transit
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Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

<b>ECT 3 [CONF 60] (01/06/93)</b> [Article 8].1 - Transit
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Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

<b>ECT 2 [CONF 56] (01/05/93)</b> [Article 8].1 – Transport and Transit	<b>(Compromise text) ECT 1 [CONF 50] (15/03/93)</b> Article 8.1 - Transport and Transit
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Each Contracting Party shall take the necessary measures to facilitate the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

<b>BA-37 (01/03/93)</b> [Article 11].1 - Transport and Transit
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Each Contracting Party [shall take the necessary measures to facilitate]<sup>2</sup> the transit through its Domain<sup>3</sup> of Energy Materials and Products from the Domain<sup>3</sup> of another Contracting Party to the Domain<sup>3</sup> of a third Contracting Party or to or from port facilities in its Domain<sup>3</sup> for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and

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<sup>2</sup> USA scrutiny reserve. EC conditional reserve subject to withdrawal of USA reserve.

<sup>3</sup> Norway reserve. According to Norway the territorial scope of application of Article 11 should be limited to land territory, internal waters and territorial sea. Submarine cables and pipelines on the continental shelf are covered in Article 4 of the Convention on the Continental Shelf of 1958 and in Article 79 of the United Nations Convention on the Law of the Sea of 1982. The Basic Agreement should not interfere with this regime already established in international law.

Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

**BA-35 (09/02/93)**  
Article [11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]<sup>2</sup> the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

**BA-31 (21/12/92)**  
**BA-26 (25/11/92)**  
**BA-22 (21/10/92)**  
Article [11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]<sup>2</sup> the transit through its Domain of Energy Materials and Products from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

**BA-15 (12/08/92)**  
Article [11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]<sup>2</sup> the transit through its Domain of [Energy Materials and Products] from the Domain of another Contracting Party to the Domain of a third Contracting Party or to or from port facilities in its Domain for loading or unloading, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

**BA-14 (24/06/92)**  
**BA 13 (19/06/92)**  
[Article 11].1 - Transport and Transit

Each Contracting Party [shall take the necessary measures to facilitate]<sup>2</sup> the transit through its [Territory] of [Energy Materials and Products] from the [Territory] of another Contracting Party to the [Territory] of a third Contracting Party or to or from port facilities in its [Territory] for loading or unloading, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.

**BA 12 (09/04/92)**  
[Article 11].1 - Transport and Transit

Each Contracting Party [[undertakes]<sup>4</sup> to facilitate]<sup>5</sup> the transit through its Territory of [Energy Materials and Products] between two or more Contracting Parties, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinction, and without imposing any unreasonable delays, restrictions or charges.

**BA 6 (21/01/92)**  
Article 3.4 - Principles  
Article 11.1 - Transport and Transit

The Contracting Parties shall facilitate the transit through their Territory of [Energy Materials and Products] without distinction as to the origin, destination or ownership.

**Article 11.1 - Transport and Transit**

Each Contracting Party undertakes to facilitate the transit through its Territory of [Energy Materials and Products] between two or more Contracting Parties, without distinction as to the origin, destination or ownership of such [Energy Materials and Products] or discrimination as to the pricing on the basis of such distinction, and without imposing any unreasonable delays, restrictions or charges.

**BA 4 (31/10/91)**  
Article 11.1a - Freedom of Movement

Each Contracting Party undertakes:

- (a) To facilitate by the most convenient means<sup>6</sup> the transit through its Territory of [Energy Materials and Products] between two or more other Contracting Parties, without distinction as to the origin, destination or ownership of such [Energy 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. Transit of electricity under this Article shall not impede the optimisation of local electricity grids. Details will be specified in an appropriate Protocol;

**BP 2 (11/09/91)**  
Article 11a - Freedom of Movement

Each Contracting Party undertakes:

- (a) to facilitate by the most convenient means the transit through its Territory of Energy Materials and Products 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

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<sup>4</sup> **Japan** asks for substituting with “shall”.

<sup>5</sup> **Norway** suggests replacing with : “shall permit”.

<sup>6</sup> **Switzerland**: insert in subparagraph (a) after “the most convenient means”, the wording “consistent with environmental protection”.



pricing on the basis of such distinction, and without imposing any unnecessary or unreasonable delays, restrictions or charges;

<p style="text-align: center;"><b>Basic Protocol (20/08/91)</b> Article 9a - Freedom of Movement</p>
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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;