

# Article 9(2) – Access to Capital

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## **General comments regarding the whole Article**

**Final Act (17/12/94)**  
**CONF 104 (Text for adoption) (14/09/94)**  
*Understanding 9 (With respect to Articles 9, 10 and Part V)*

As a Contracting Party's programmes which provide for public loans, grants, guarantees or insurance for facilitating trade or Investment abroad are not connected with Investment or related activities of Investors from other Contracting Parties in its Area, such programmes may be subject to constraints with respect to participation in them.

**Interim text (25/06/94)**  
*Understanding 9 (To Articles 10 and Part V)*

Insofar as a Contracting Party's programmes which provide for public loans, grants, guarantees or insurance for facilitating trade or Investment abroad are not connected with Investment or related activities of Investors from other Contracting Parties in its Area, such programmes may be subject to constraints with respect to participation in them.

**Interim text (20/06/94)**  
*Understanding 9 (To Article 10 and Part V)*

As a Contracting Party's programmes which provide for public loans, grants, guarantees or insurance for facilitating trade or Investment abroad are not connected with Investment or related activities of Investors from other Contracting Parties in its Area, such programmes may be subject to constraints with respect to participation in them.

**ECT 6 [CONF 82] (20/12/93)**  
[Article 10] – Access to Capital

Only paragraph (1) of this Article was discussed in a Formal Sub-Group in October and December.

EC scrutiny reserve.

**ECT 5 [CONF 72] (11/10/93)**  
Article 10 – Access to Capital

In the formal Sub-Group on 8 October a discussion on paragraph (1) was conducted but not finalised. The text reflects this discussion. A few USA proposals on the text of paragraph (2) have been also footnoted.

The Chairman of the Sub-Group invited delegations to forward him written comments on this text before the close of play on 29 October 1993 so that the new draft could be circulated before the next Plenary.

**ECT 4 [CONF 64] (07/07/93)**  
Article 10 – Access to Capital

- During the May Plenary the Chairman asked WG II Chairman to prepare consolidated text for Article 10 taking account of the alternative texts submitted by Hungary, Romania, Russian Federation and USA. The new text indicates the differences in relation to the text comprised in CONF-60 by deletion marks [DL] or by underlining the new text. Alternative suggestions are included in the footnotes under specific comments.
- Sub-Group which met on 28 June only made little progress so that the June Plenary did not discuss this colated text.

**ECT 3 [CONF 60] (01/06/93)**  
Article 10 – Access to Capital

**Chairman's note** During the May Plenary several delegations presented alternative texts for this Article: Hungary (Room Document 1); Romania (Room Document 6); USA (Room Document 9) and Russian Federation (Room Document 37). The Chairman asked WG II Chairman to prepare a consolidated text for discussion at the next Plenary meeting.

**ECT 2 [CONF 56] (01/05/93)**  
[Article 10] – Access to Capital

Several Eastern European countries preferred the earlier version of this Article and expressed the view that the needs of economies in transition should explicitly be taken into account in this Article.

**Russian Federation** will come up with its own text. Other delegations might do the same.

**BA-37 (01/03/93)**  
**BA-35 (09/02/93)**  
[Article 13] – Access to Capital

The discussion in WG II on 4 February 1993 had been based on the analysis prepared by USA delegation exploring the relationship between issues addressed in this Article and Article 16, particularly para (7) (see Room Document 9 of 1 February 1993). USA's view is that issues contained in Article 13 are sufficiently covered by Article 16 and consequently do not require any coverage by Article 13. Some delegations supported this view. Some delegations however, pointed out that its retention, particularly of para (2), has merits.

Chairman asked Russian Federation and USA to discuss the need for this Article once again in the light of the deductions indicated in Room Document 9 and come up with a clear statement of what should be covered in this Article that is not covered by Article 16(7).

General scrutiny reserve.

**BA-31 (21/12/92)**  
[Article 13] – Access to capital

In the December WG II meeting it was decided that, in good time for the next WG II meeting:

- Russian Federation will produce a note indicating the need for this Article and, if so, which paragraphs need to be maintained. Other delegations which see advantage in maintaining this Article, are invited to do the same.
- USA will explore in a note the relation with Article 16(7) and provide - if necessary - adaptive formulations which should minimise any restrictions on a free flow of capital.

Reference is also made to the Romanian notes on this subject as indicated in Room Documents 19 of 17 December 1992 and 23 of 18 December 1992.

General scrutiny reserve.

**BA-26 (25/11/92)**  
[Article 13] – Access to Capital

This Article shall be revisited at the December WG II meeting. To this end Canada shall circulate the OECD definition on capital market and Hungary will forward to the Secretariat by 30 November 1992 the description of its financial schemes.

General scrutiny reserve.

**BA-22 (21/10/92)**  
**BA-15 (12/08/92)**  
**BA-14 (24/06/92)**  
[Article 13] – Access to Capital

General scrutiny reserve.

**BA-12 (09/04/92)**  
[Article 13] – Access to Capital

Article based on Russian Federation suggestion.

The Chairman is concerned to ensure that the current wording of this Article does not jeopardize national provisions to protect private Investors or hamper the ability of lenders to demand appropriate security for loans. EC and Japan stressed the need to clarify the objective of these provisions, as well as the criteria and appreciation modalities which are referred to. EC points out that guarantee mechanism for political risks cannot be globally provided by other Parties.

Scrutiny reserve by many delegations.

**BA-6 (21/01/92)**  
[Article 13] – Access to Capital

Scrutiny reserve by many delegations.

New Article based on USSR suggestions.

The Chairman had previously asked delegations to send proposals on this subject to the Secretariat by 15 December 1991. No responses were received. The Chairman is concerned to ensure that the current wording of this Article does not jeopardize national provisions to protect private Investors or hamper the ability of lenders to demand appropriate security for loans.

## **Article 9.2**

**ECT as adopted (17/12/94)**  
Article 9.2 – Access to Capital

A Contracting Party may adopt and maintain programmes providing for access to public loans, grants, guarantees or insurance for facilitating trade or Investment abroad. It shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including any objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.

**CONF 104 (Text for adoption) (14/09/94)**  
Article 9.2 – Access to Capital

A Contracting Party may adopt and maintain programmes providing for access to public loans, grants, guarantees or insurance for facilitating trade or Investment abroad. It shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including but not limited to, on any grounds, objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.

**Interim text (25/06/94)**  
Article 10.2 – Access to Capital

A Contracting Party may adopt and maintain ~~programmes providing for~~ measures affording access to public loans, grants, guarantees or insurance for to facilitating e trade or Investment abroad. It shall make any such facilities available, for to Investments in the Economic Activity in the Energy Sector in the Areas of other Contracting Parties or and for financing trade in Energy Materials and Products with other Contracting Parties, provided that such access is consistent with the objectives, constraints and criteria of such programmes measures (including but not limited to, on any grounds, objectives, constraints or criteria relating to ~~the place of business of an applicant for any such facility~~ or the place of delivery of goods or services supplied with the support of any such facility access).

**Interim text (20/06/94)**  
10.2 – Access to Capital

A Contracting Party may adopt and maintain programmes providing for access to public loans, grants, guarantees or insurance for facilitating trade or Investment abroad. It shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including but not limited to, on any grounds, objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.

**Compromise text [CONF 98] (22/04/94)**  
**ECT 7 [CONF 96] (17/03/94)**  
Article 10.2 – Access to Capital

A Contracting Party which adopts and maintains programmes providing for access to public loans, grants, guarantees or insurance for facilitating trade or Investment abroad shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including but not limited to, on any grounds, objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.

**ECT 6 [CONF 82] (20/12/93)**  
[Article 10].2 – Access to Capital

A Contracting Party which [has]<sup>1</sup> programmes providing for access to public loans [and]<sup>2</sup> grants, guarantees [and]<sup>3</sup> insurance for facilitating trade or Investment abroad shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes, (including but not limited to, on any grounds, objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in the energy sector with other Contracting Parties.

**ECT 5 [CONF 72] (11/10/93)**  
Article 10.2 – Access to Capital

A Contracting Party which [has]<sup>1</sup> programmes providing for access to public loans [and]<sup>2</sup> grants, guarantees [and]<sup>3</sup> insurance for facilitating trade or Investment abroad shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes, (including but not limited to, on any grounds, objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the energy sector of other Contracting Parties or for financing trade in the energy sector with other Contracting Parties.

**ECT 4 [CONF 64] (07/07/93)**  
Article 10.3 – Access to Capital

A Contracting Party which has programmes providing for access to public loans and grants, guarantees and insurance [for facilitating trade or Investment abroad]<sup>4</sup> shall [to the extent permitted by its laws and regulations, make such facilities available]<sup>5</sup> to its Investors for Investments in Economic Activity in the Energy Sector of other Contracting Parties or [DL] for financing trade [in

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<sup>1</sup> USA suggests replacing with: “adopts or maintains”.

<sup>2</sup> USA proposes deletion and substitution with comma.

<sup>3</sup> USA proposes replacing with: “or”.

<sup>4</sup> Hungary and Romania seek deletion.

<sup>5</sup> Russian Federation proposes replacing with: "provide fullest possible access to such programmes".

relation [DL] to such Investments,]<sup>6,7</sup> [in accordance with the criteria for assistance from such programmes.]<sup>8</sup>

<b>ECT 3 [CONF 60] (01/06/93)</b> Article 10.2 – Access to Capital	<b>ECT 2 [CONF 56] (01/05/93)</b> [Article 10].2 – Access to capital
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A Contracting Party which has programmes providing for access to public credits, guarantees and insurance for facilitating trade or Investment abroad shall to the extent permitted by its laws make such facilities available to its Investors for Investments in Economic Activity in the Energy Sector of other Contracting Parties or available for trade in relation with such Investments, in accordance with the criteria for assistance from such programmes.

<b>(Compromise text) ECT 1 [CONF 50] (15/03/93)</b> Article 10.2 – Access to Capital
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To the extent permitted by its laws each contracting Party shall provide [DL] access to public credits, guarantees and insurance for Investors in extraction, production, conversion, treatment, carriage or supply of Energy Materials and Products.

<b>BA-37 (01/03/93)</b> <b>BA-35 (09/02/93)</b> [Article 13].2 – Access to Capital
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Each Contracting Party shall <sup>9</sup> provide the fullest possible access to public credits, guarantees and insurance for Investors in extraction, production, conversion, treatment, carriage or supply of Energy Materials and Products.<sup>10</sup>

<b>BA-31 (21/12/92)</b> <b>BA-26 (25/11/92)</b> <b>BA-22 (21/10/92)</b> [Article 13].2 – Access to Capital
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Each Contracting Party shall provide the fullest possible access to public credits, guarantees and insurance for investors in extraction, production, conversion, treatment, carriage or supply of Energy Materials and Products.

<b>BA-15 (12/08/92)</b> <b>BA-14 (24/06/92)</b> [Article 13].2 – Access to Capital
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Each Contracting Party shall provide the fullest possible access to public credits, guarantees and insurance for investors in extraction, production, conversion, treatment, carriage or supply of [Energy Materials and Products].

<sup>6</sup> **Russian Federation** suggests replacing with: “in Energy Materials and Products”.

<sup>7</sup> **USA** seeks deletion of either such qualifying phrase.

<sup>8</sup> **Hungary** and **Russian Federation** suggest deletion.

<sup>9</sup> **Canada** prefers inserting: “endeavour to”.

<sup>10</sup> **Austria** suggests adding: “in accordance with its laws and regulations”.

**BA 13 (19/06/92)**  
Article 13.2

<sup>11</sup>[Each Contracting Party shall provide the fullest possible access to public credits, guarantees and insurance for Investors In extraction, production, conversion, treatment, carriage or supply of [Energy Materials and Products]]<sup>12</sup>.

**BA 12 (09/04/92)**  
[Article 13].2 – Access to Capital

Each Contracting Party shall provide <sup>13,14</sup> the fullest possible access consistent with this Agreement to public credit, guarantee or insurance agreement to Investors, in connection with extraction, production, conversion, treatment, carriage and supply of [Energy Materials and Products].

**BA 6 (21/01/92)**  
[Article 13].2 – Access to Capital

Each Contracting Party shall provide the fullest possible access consistent with this Agreement to official credit, guarantee or insurance agreement to Investors, in connection with extraction, production, conversion, treatment, carriage and supply of [Energy Materials and Products].

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<sup>11</sup> **Japan** and **Austria** scrutiny reserve on para (2).

<sup>12</sup> Deferred to later discussion.

<sup>13</sup> **Japan** suggests inserting: “in the framework of its domestic systems”.

<sup>14</sup> **EC** suggests inserting: “in accordance with its laws and regulations”.