

4<sup>th</sup> South East Europe Energy Dialogue  
Thessaloniki, June 2-4, 2010



# Energy Charter Contributions to Investment Climate in Energy Sector

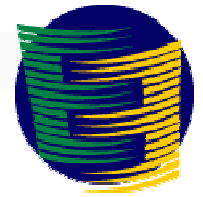
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Secretariat

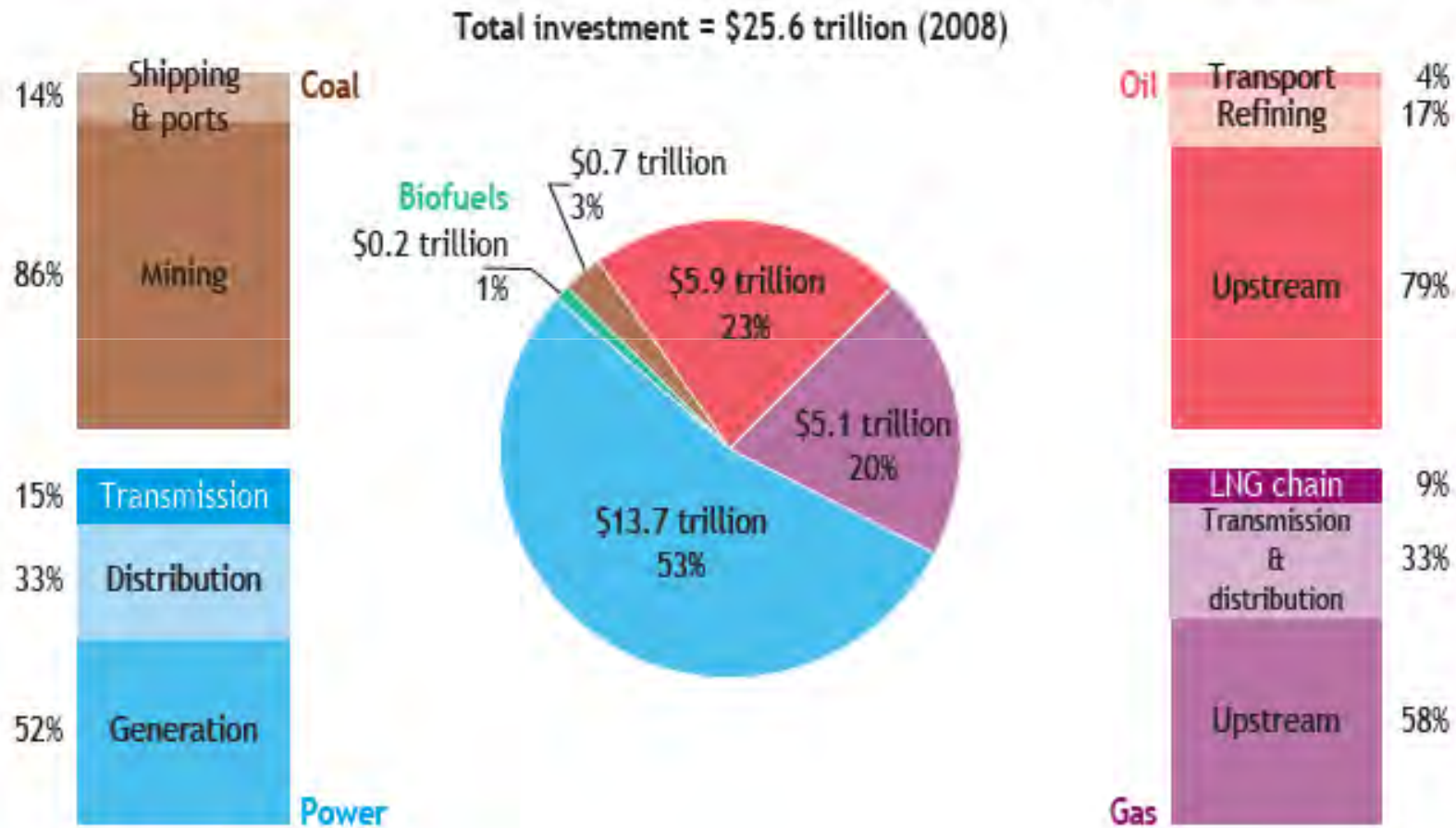
The views expressed in this presentation are those of the  
author only and not necessarily of the Energy Charter  
Secretariat or any party to the Energy Charter Treaty



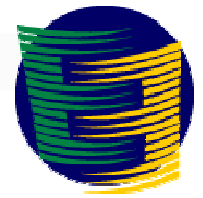
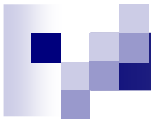
# I. Energy Investments



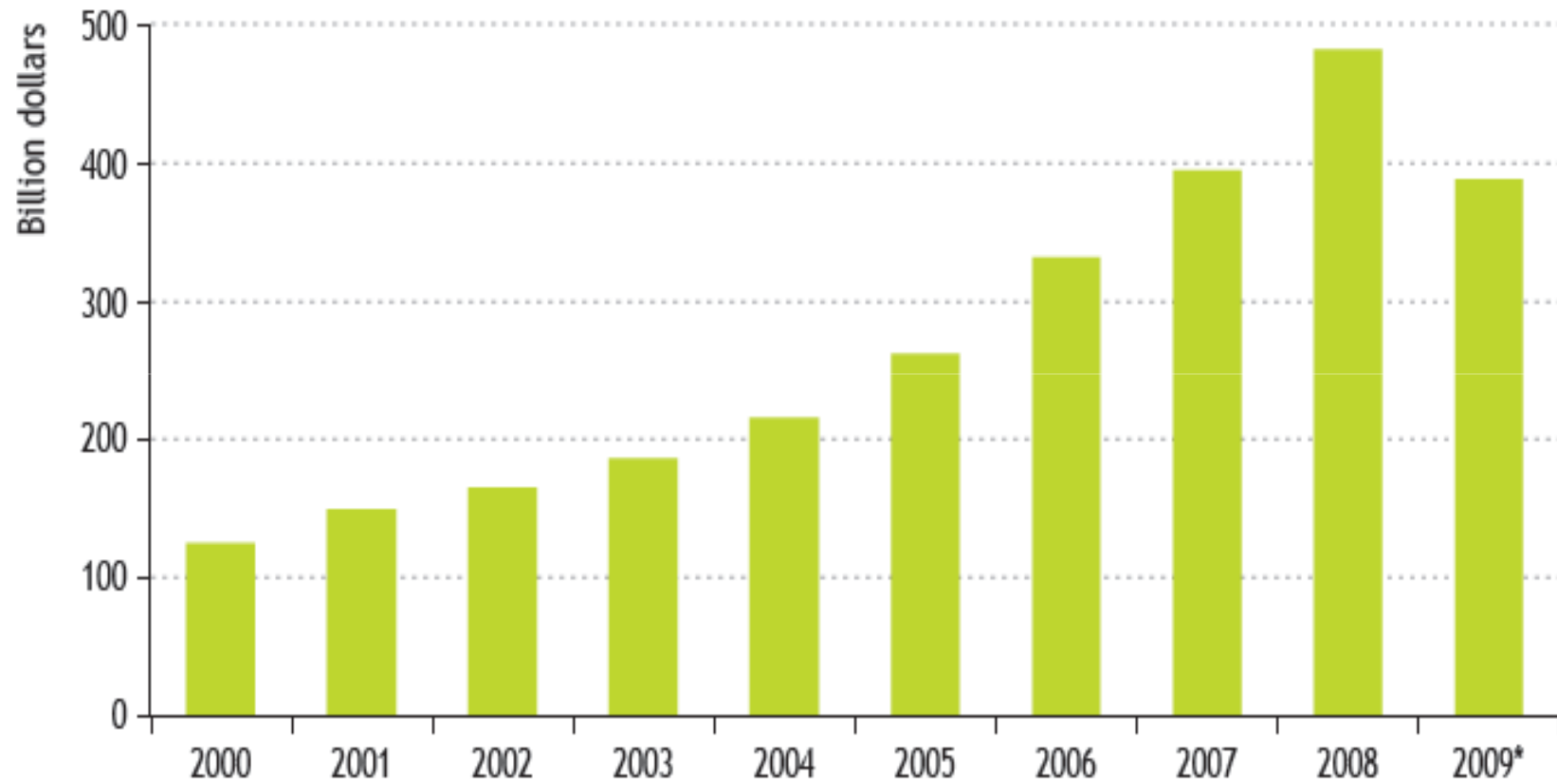
**Figure 1.20** • Cumulative investment in energy-supply infrastructure in the Reference Scenario, 2008-2030 (in year-2008 dollars)



Source: IEA World Energy Outlook 2009

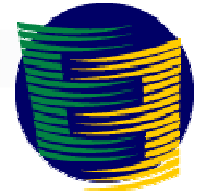
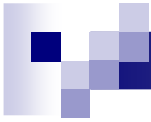


**Figure 3.1** ● Worldwide upstream capital expenditures

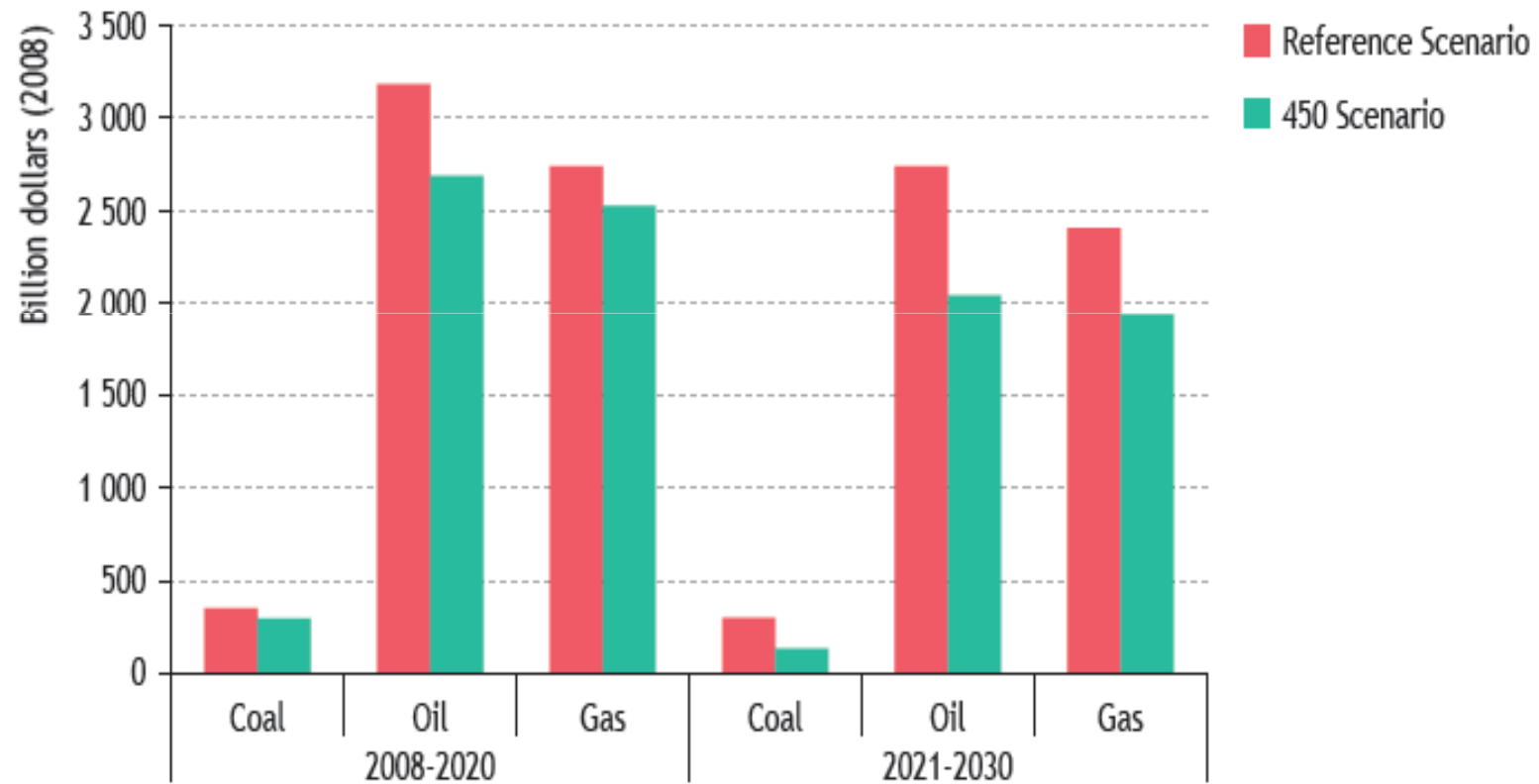


\* Based on company plans.

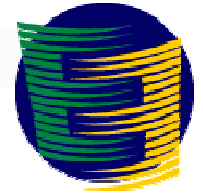
Source: IEA World Energy Outlook 2009



**Figure 7.12** • Cumulative investment in fossil-fuel supply by fuel and scenario

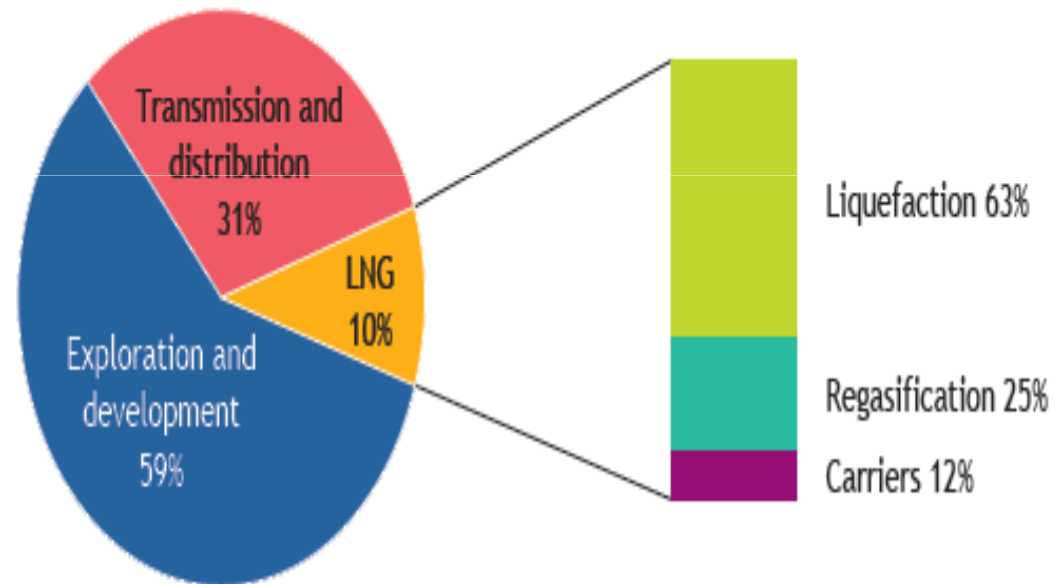


Source: IEA World Energy Outlook 2009

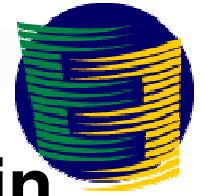


**Figure 12.13** • Breakdown of cumulative investment in gas-supply infrastructure by activity in the Reference Scenario, 2008-2030

Total = \$5 149 billion (2008)



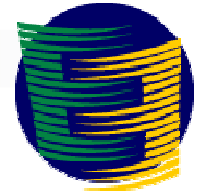
Source: IEA World Energy Outlook 2009



# Projected Energy Sector Investment Needed in Eastern Europe and the Former Soviet Union by 2030-35 (*billions of 2008 dollars*)

Sector	Investment required
Crude oil	900
Refining	20
Gas	230
Coal	150
Electricity	1,500
Heating	500
Total	3,300

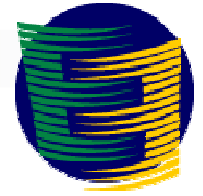
Source: World Bank, *Lights Out?*, 2010, p. xxiii.



# Determinants of Energy Investment

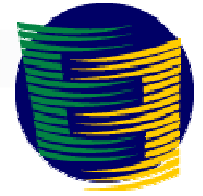
- Macroeconomic conditions
- Energy prices and stability
- Environmental policies
- Geopolitics
- Technological developments
- Sovereign (national) energy policies





# Characteristics of Energy Investment

- Technology
- Large-scale and capital-intensive investment
- Large initial investment
- Financial resources and mechanisms
- Risks and profits
- Long project life
- Idiosyncratic investment
- Part of a supply chain
- Location

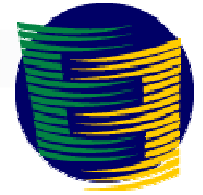


# Risks Associated with Energy Investment

- Political/legal risks
  - Related regulations
  - Profit transfer
  - Taxes
  - Changes in terms and conditions of the agreement
  - Expropriation
  - Jurisdiction
- Economic risks
  - Prices
  - Marketing
  - Construction
  - Operation
  - Inflation
  - Foreign currency Exchanges
- Energy Charter Treaty designed to take out political/legal risks associated with energy investment
- Other risks
  - Natural disasters
  - Civil unrests, wars
  - Strikes



## **II. Pipelines in the Euroasia Region: Major Issues and Policies**



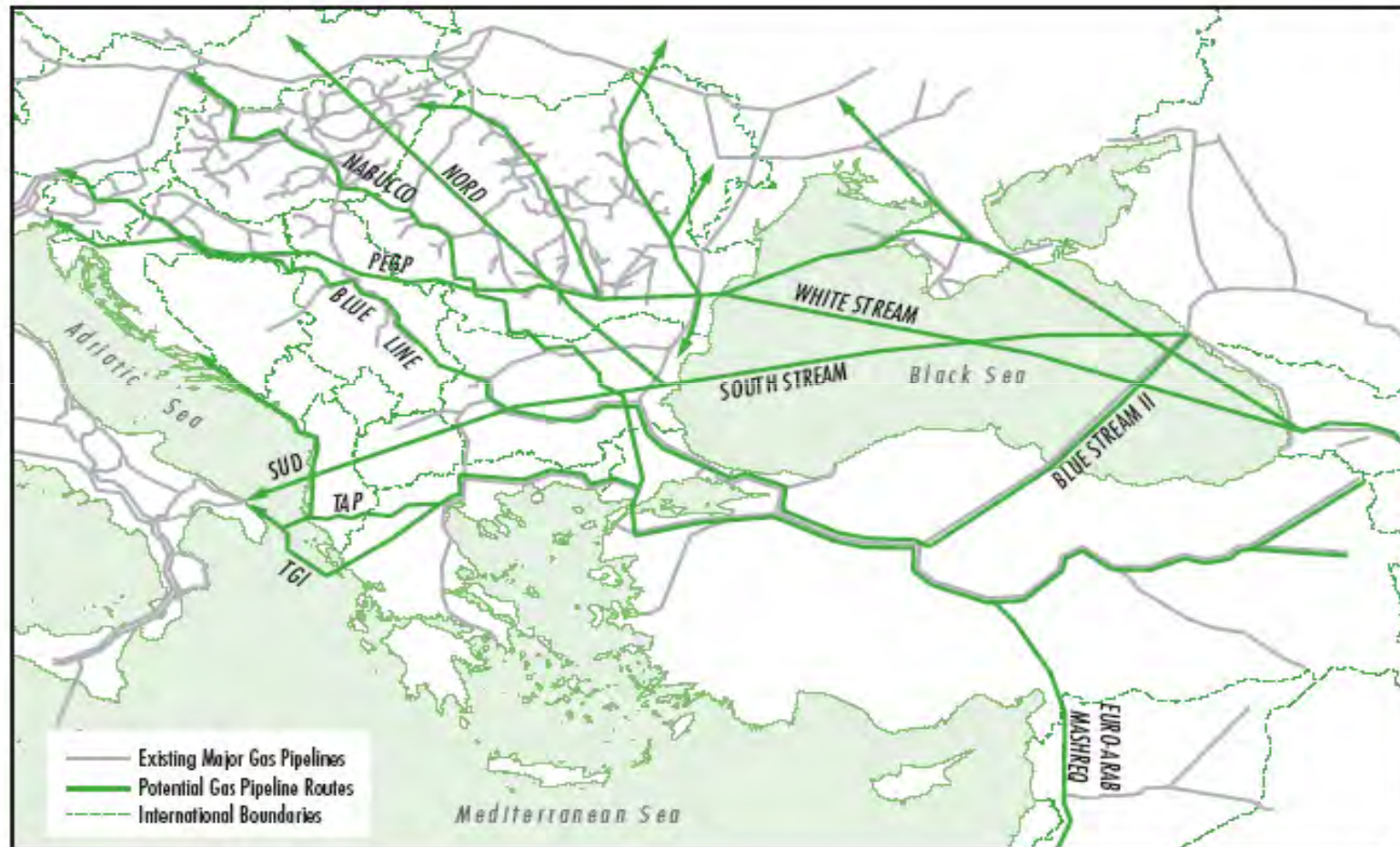
## Gas Imports by the European Union, 2008 (*billion cubic meter*)

Item	Quantity imported
Gas piped from Russian Federation	127
Gas piped from Norway	93
Gas piped from Algeria and Libya	45
Liquefied natural gas	50
Total	315

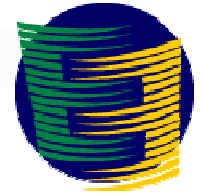
Source: World Bank, *Lights Out?*, 2010, p. 22.



# Regional Gas Pipelines Proposed in Southeastern Europe



Source: World Bank, Lights Out?, 2010, p. 36.

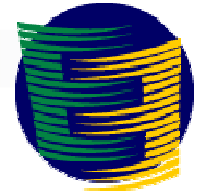


# Analysis of Alternative Corridor Options

- Need for route diversification for producing countries
- Appetite for consuming countries for source and/or route diversification
- Variations in policies and motivations of transit countries – political (both domestic and international), economic or strategic issues leading to divergent interests (e.g., Greece, Turkey, Ukraine, Georgia, Kazakhstan, Azerbaijan, Turkmenistan, Russia, etc...)



## III. Energy Charter Treaty



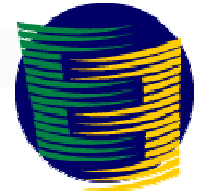
## A Brief History of the Energy Charter Process

- **European Energy Charter** (December 1991): a political declaration for energy cooperation in the post-Cold War era. Western/Central/Eastern European and the FSU countries, plus the US, Canada, Australia and Japan, gathered in the Hague, Netherlands.
- **Energy Charter Treaty** (December 1994): Inter-governmental agreement to provide legal framework to protect investments and secure trade and transit in the energy sector. Effective since April 1998.





# The Four Pillars of the ECT



**Dispute Settlement**

**Investment**

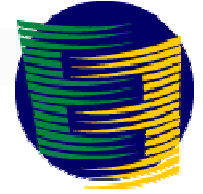
**Trade**

**Transit**

**Energy  
Efficiency**

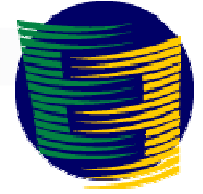
**Energy Charter Treaty** (signed in 1994)

**European Energy Charter** (signed in 1991)



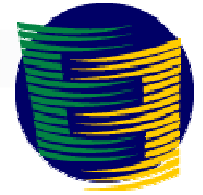
# Investment Protection

- First multilateral investment agreement
- Energy sector-specific
- Principle of non-discrimination/national treatment for established investments
- Best endeavour clause for investments in the making
- Confirmation of national sovereignty over natural resources
- A discussion forum for energy investment issues



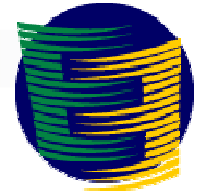
# The Charter Contribution to Energy Investments

- Additional legal framework as a back-up for energy contracts (PSA's, transboundary pipelines or otherwise)
- Alleviating the need to seek for bilateral international treaty structure as regards protection of energy investments, like in the case of the BTC Project
- Efficient legal protection under international public law through functioning of the “umbrella clause”
- Model agreements (IGA and HGA) for energy sector activities (including construction of cross-border transit pipelines) developed as best-practice for the benefit of any interested party



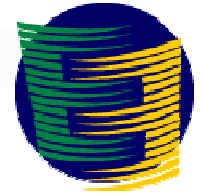
# Definition

- **Investment:** every kind of asset (including shares, claims to money, intellectual property, licenses, concessions) owned or controlled directly or indirectly by an Investor
- **Investor:** natural persons of a Contracting Party (including permanent residents) and companies and organizations established under the laws of a Contracting Party
- Possibility to cover trade and transit issues under the investment definition? Additional comfort for the energy business in these two?



# Dispute Resolution Procedures

- An opportunity for amicable settlement
- In failing the amicable settlement; then:
- Investor-to-state disputes (Art. 26)
  - ICSID (institutional)
  - UNCITRAL (*ad hoc*)
  - SCC (institutional)
- State-to-state disputes (Art. 27)



# Trade and Transit

## ■ Trade

- GATT rules applied by reference for energy products and equipments
- Trade dispute settlement procedures
- Trade Amendment (GATT → WTO) adopted in April 1998, entered into force very recently

## ■ Transit

- Covering grid-bound energy transport
- Freedom of transit (no unreasonable delays, restrictions or charges) and non-discrimination (as regards origin, destination or ownership); but no mandatory third party access
- Non-interruption of flow
- Obligation not to obstruct introduction of new capacity in case of insufficient infrastructure or available capacity
- Transit dispute conciliation mechanism
- Transit Protocol currently being negotiated (towards more clear and strengthened, legally binding, operational and measurable provisions)

