Gas Transit in Eurasia: transit issues between Russia and the European Union and the role of the Energy Charter

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Special Session on "Interconnection versus Integration: The Challenge of Transit Regimes and Jurisdictions for Eurasian Gas"

CONTENTS:

1. Soviet/Russian gas supplies to Europe: contractual structure, its evolution & the role of transit
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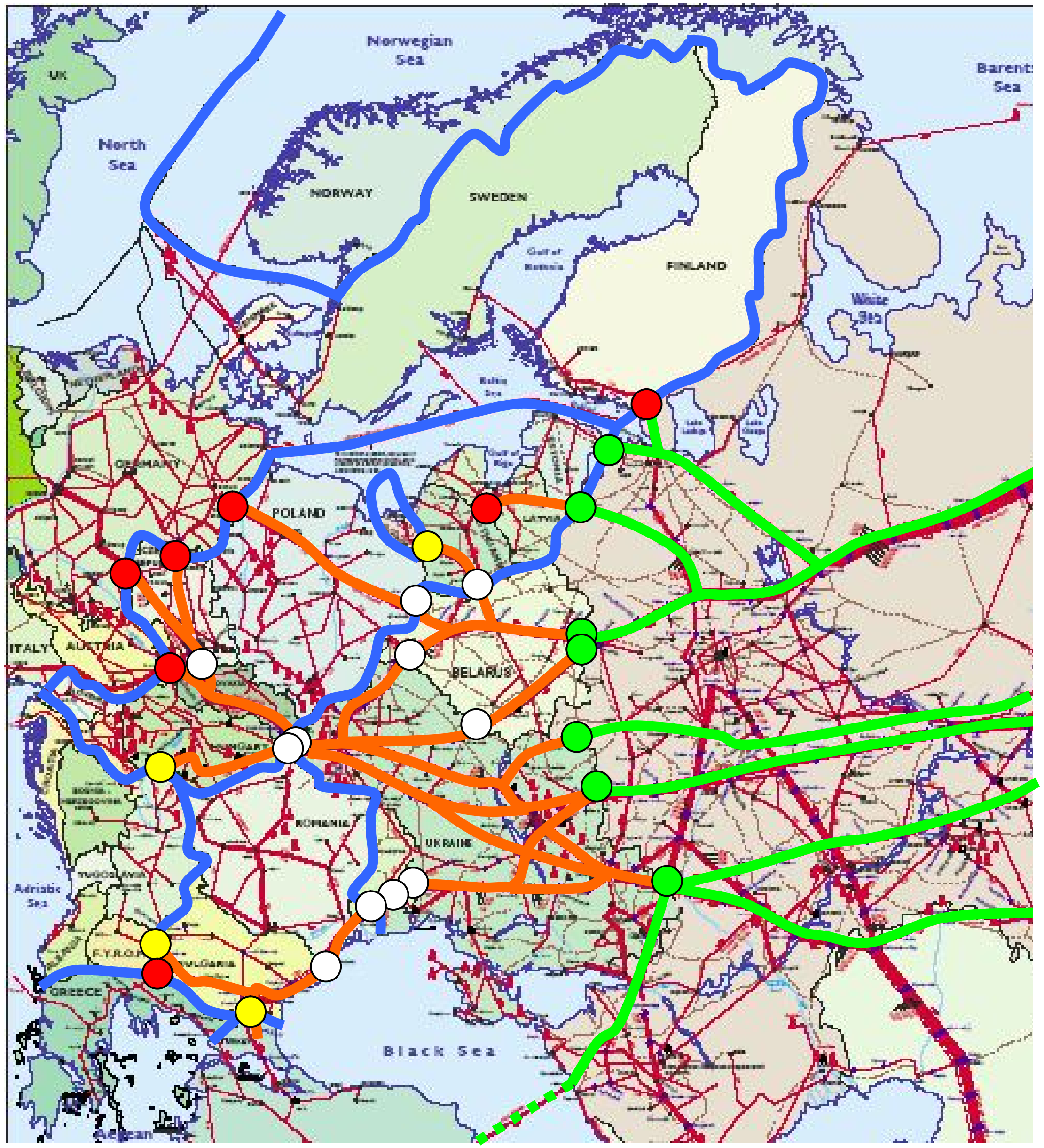
Russian/Soviet & Groningen (Dutch) LTGEC Models: Differences & Similarities

	Groningen LTGEC model (since 1962)	Russian / Soviet LTGEC model (since 1968)	Russian / Soviet specifics (Why Russian /Soviet LTGEC model differs from Groningen LTGEC model)
Contract duration	Long-term	Longer-term	Larger West Siberian fields & unit CAPEX, longer transportation distances & pay-back periods
Delivery point	Upstream to end-user	Upstream to end-user - on EU-15 border; one delivery point served for few final consumers	Historically: on political border between East & West
Pricing	Replacement value + net-back to delivery point + regular price review + minimum pay obligation (take-and/or-pay)		West: both for export & domestic sales; East: only for export sales
Protection from price arbitrage	Destination clauses		More important since in one delivery point - few contracts with much more differing export prices destined for different markets
Role of transit	None (minimal)	Significant – especially after dissolution of COMECON & USSR & after EU expansion	New sovereign states appeared upstream to historical delivery points + new rules discriminating transit

Russian Gas Export to/through EU:
On-border Sales and Transit Legs (post 2007)



Pipelines within Russia
Pipelines outside Russia

EU – 15 ► EU – 25 ► EU - 27

Russian LTGEC to EU:

A, B, C, D – points of change of ownership for gas and/or pipeline;
C – delivery points to EU;
D – delivery points through EU as REIO

After dissolution of USSR / COMECON new risks have appeared in Russian LTGEC to Europe - outside Russia but within geographical area of Russian side responsibility, upstream & inclusive to LTGEC delivery points

Map source: CGES

Role of Gas Transit for its Main Existing Exporters to Europe (1999)

Country-exporter	Direct supplies, % of volume of exports	Transit through the territory of: % of volume of exports			
		one country	two countries	three countries	four countries
EXISTING EXPORTERS					
Netherlands	76,2	13,8	10,0	-	-
Norway	67,7	7,5	21,4	3,4	-
Algeria	44,9	14,8	9,6	24,3	6,4
Russia	39,5	9,4	11,4	28,1	11,6

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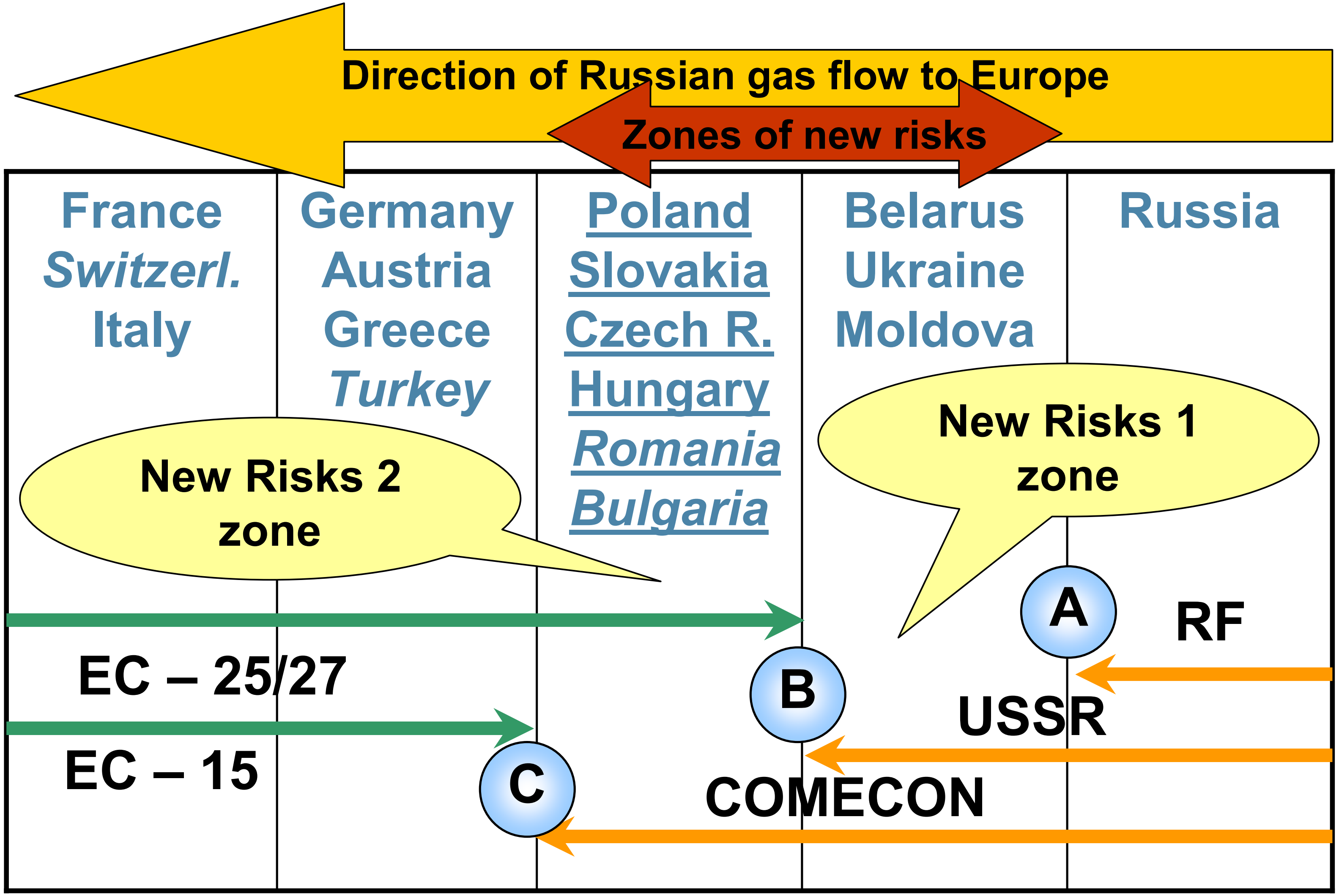
Russian Gas Supplies to Europe: Zones of New Risks for Existing Supplies Within Russia's Area of Responsibility



Italic – non-EU countries; New EU accession states: <u>underlined</u> – since 01.05.2004, <u>*underlined + italic*</u> – since 1.01.2007; A, B, C – points of change of ownership for Russian gas and/or pipeline on its way to Europe

Russia's Gas Supply to Europe: New Risks – Which, When and Where (in the Zone of Responsibility of Russian Side)

- Since 1991: upstream to delivery points, within CIS/NIS
  - USSR dissolution + diversified supply routes => new transit risks
- Since 2002/03: + at delivery points (consequences for Russian gas at end-use EU markets?)
  - solution on destination clauses = package deal, but whether it balanced? (e.g. TAG Dec'05 auction - capacity allocation procedure)
- Since 2004/07: + upstream to delivery points, within enlarged EU-25/27
  - combined result of EU expansion + EU gas market liberalization => new prospective transit / transportation risks
- Role of 3rd EU liberalization package? (announced 19 September 2007)

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New Risks 1: Former COMECON/FSU-Related (Since 1991)

- New former COMECON/FSU-related risks for Russian gas supplies to Europe:
  - result & long-term economic consequences of dissolution of USSR / COMECON political system
  - reflect objective long-term economic problems of (soft !) transition from political pricing / supply obligations within unified political system of USSR / COMECON to market-based pricing and supply obligations between sovereign states and their commercial entities

Soviet/Russian Gas Supplies to COMECON/CIS: *Prior to* Dissolution of the USSR

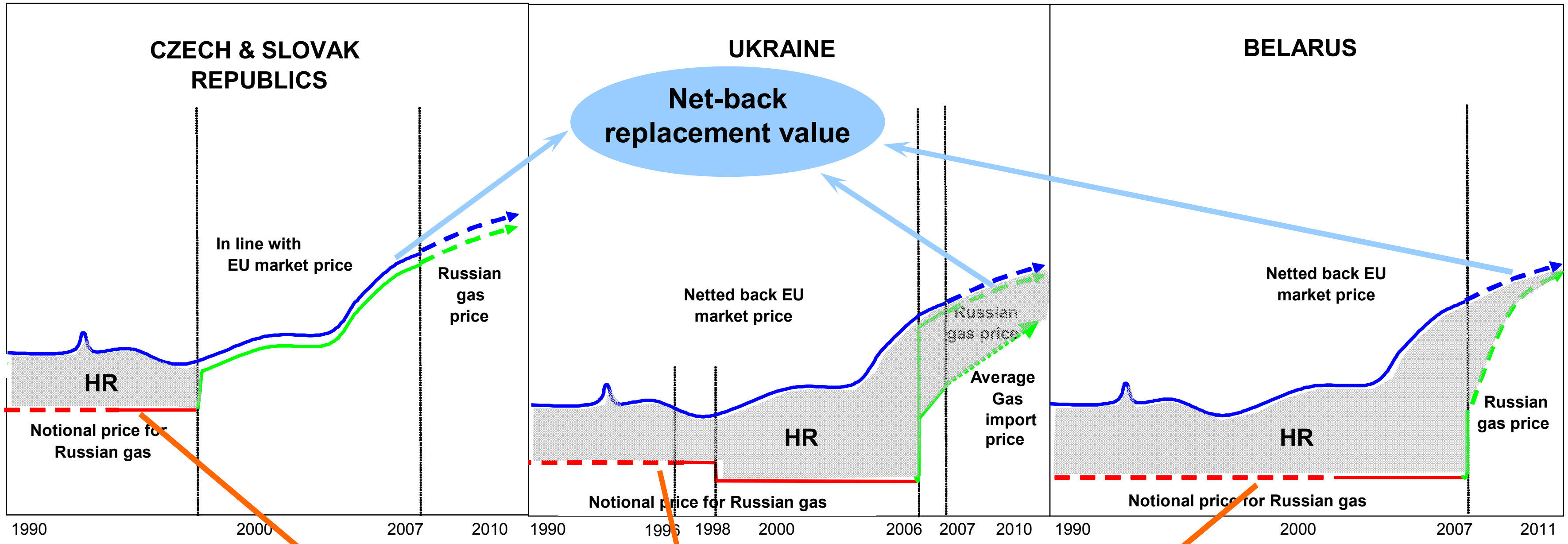
- Political (friendship) pricing => :
  - subsidized (notional) export prices
  - portion of resource rent is left to importer in exchange on his political concessions to exporter
  - sharing USSR resources (which today are mostly Russian resources) within USSR and with COMECON countries
- Barter & quasi-barter deals
- Transportation system – but not transit system
- No transit within USSR
- Export & transit supplies are not contractually separated within COMECON

Soviet/Russian Gas Supplies to COMECON/CIS: *After* Dissolution of the USSR

- Long & painful transition to :
  - Contractual separation of transit & export supplies
  - Formation of domestic transport vs. transit legislation
  - From barter to cash payments
  - From politically-subsidized - to market-based pricing & prices:
    - Transit tariffs methodologies
    - Market-oriented export pricing & prices

Energy Charter role: ECT Art.7 + draft Transit Protocol + gas/transit-related activities: e.g. Transit tariffs study (Jan'06), Pricing study (March'07), etc.

Russian Gas Prices to the EU and Countries Along the Pipe



Remarks: 1- The figures are entirely for illustration purposes and, therefore, may not fully reflect the actual price levels and movements

2- The illustration for "Netted back EU market prices" are based on the IEA's World Energy Outook, 2006

3- Estimates for future gas price movements beyond 2007 are entirely illustrative.

4- Recent actual price figures for Ukraine and Belarus, based on information from public sources, are as follows:

For Ukraine - Russian gas price: 230 $/mcm (2006) ; Average gas price (for a mixture of Russian / Central Asian gas): 95 and 135 $/mcm (2006 and 2007, respectively)

For Belarus - Russian gas price: 100 $/mcm (2007) It will reach market price level by 2011 in agreed upon steps (67, 80, 90 and 100% from 2008 to 2011)

5- Notinal prices for Russian gas were used to determine volumes of gas as compensation for transit services.

For Ukraine: 80 $/mcm until 1998; 50 $/mcm from 1998 to 2006

For Belarus: 47 $/mcm most recently until 2007

Hotelling Rent

Cost-plus? (Net forward)

Source: Based on “Putting a Price on Energy: International Pricing Mechanisms in Oil and Gas”, Energy Charter Secretariat, 2007.

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New Risks 2:
EU-Related (Since 2004/2007)

- No transit of Russian gas inside/through EU up to May'2004 (EU-15)
- Transit of Russian gas inside/through EU since May'2004 (EU-25) and even more since Jan'2007 (EU-27)
- Transit / transportation risks for imported Russian & other non-EU gas inside EU (issue for multilateral debate => Energy Charter as the best forum):
  - No clear transit rules for internal EU gas market (domestic transportation = free flow of goods inside EU)
  - Major elements of EU liberalization (unbundling + mandatory TPA) => contractual mismatch => creates new transit / transportation risks => investment risks =>
  - e.g. Problem of contractual mismatch (long-term access to infrastructure for transit flows to match existing LTGEC supply obligations) => no secured pay-back upstream CAPEX => derogation from 2nd Gas Directive (Art.21-22)

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Types of Transit Systems

- Pipeline crossing sovereign territory and carrying transit gas without any connection to the gas supply system of the transit country.

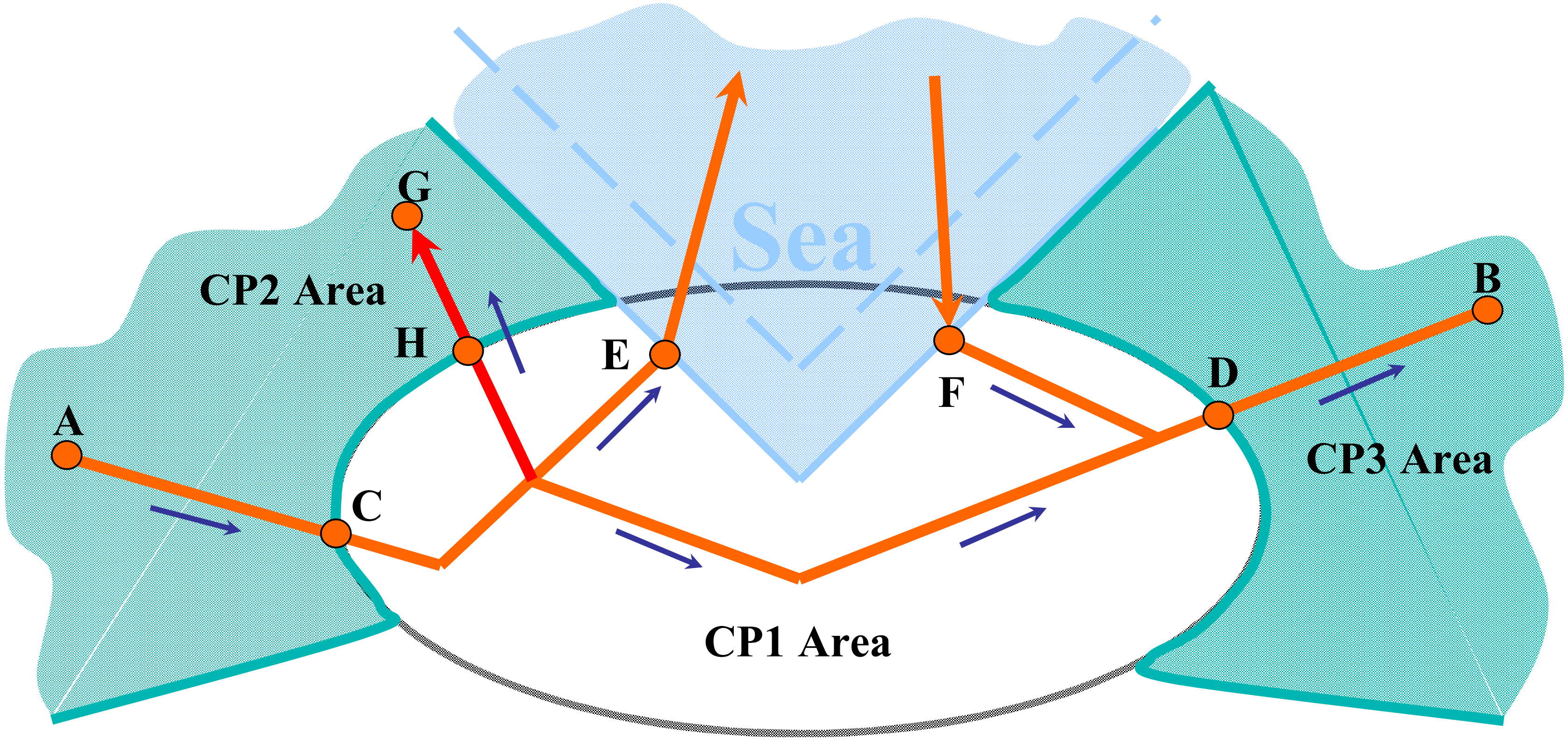
  Examples: Moldova, lines Algeria/Morocco
- Transit pipeline owned by a separate entity, predominantly used for gas transit, but also used to supply gas of the same origin to the transit country.

  Examples: most Russian transit pipelines, plus TAG, WAG, MEGAL, TENP
- Transit pipeline system integrated into the domestic supply system and owned and operated by the main national transmission operator, where the transit gas flow can still be traced

  Examples: Ukraine, Belgium
- Systems where transit volumes commingle with a highly meshed national grid

  Examples: UK, Germany, France

Transit is Not the Only Option …



<u>3 possibilities of gas supplies from A to B:</u>

<u>No transit</u> (e.g. for exporters - on-boarder sales at C):

Turkmenistan/Uzbekistan/Kazakhstan-RF-UA, Algeria-Italy, Algeria-Spain;

<u>Transit (throughput through C & D)</u> :

- through the pipe in CP1 owned/leased by shipper: France in Germany, Norway in France, Italy in Austria; RF (partly) in EE;
- through the pipe in CP1 not owned by shipper: Ukraine, Belarus (until 2007), EU

… But It Might Be the Cheapest One – If Adequately Legally Protected

TWO SCENARIOS OF RUSSIAN GAS EXPANSION FURTHER INTO EUROPE

1) <u>Gazprom = owner of pipeline</u> (construction of new pipeline capacities, purchase of pipeline companies shares)

- More expensive

- Decreasing rights of pipeline owners on decisions for transit / transportation conditions according to EU legislation, *plus*

-EU acquis: Unbundling & MTPA (no preferences for own gas)

1) <u>Gazprom = shipper</u> (from gas sales at the border to wholesale buyers/resellers –> to sales to final consumers within country)

- Less expensive

- Increasing rights of transporters (shippers) on decisions for transit / transportation conditions according to EU legislation, *but*

- EU acquis: "reciprocity" as "anti-Gasprom" tool ?

ECT draft Transit Protocol: Major Issues Addressed

1. Obligation to observe Transit Agreements
2. Prohibition of unauthorized taking of EMP in Transit
3. Definition of Available Capacity in Energy Transport Facilities used for Transit
4. Negotiated TPA to Available Capacity (mandatory TPA is excluded)
5. Facilitation of construction, expansion or operation of Energy Transport Facilities used for Transit
6. Transit Tariffs shall be non-discriminating, objective, reasonable and transparent, not affected by market distortions, and cost-based incl. reasonable ROR
7. Technical and accounting standards harmonized by use of internationally accepted standards
8. Energy metering and measuring strengthened at international borders
9. Co-ordination in the event of accidental interruption, reduction or stoppage of Transit
10. Protection of International Energy Swap Agreements
11. Implementation and compliance
12. Dispute settlement

Benefits To Be Expected Of Transit Protocol Implementation

- Diminishment of risks related to transit
- Better financing terms
- Increase of competitiveness of transit supplies;
- Improvement of energy security (supplies+ demand+ infrastructure).

"Lami Package" (October'2003 EU Commission's six demands on Russia under energy agenda in EU-Russia WTO accession negotiations)

- Raise internal prices for natural gas
- End Gazprom's monopoly on gas exports
- Lift restrictions on gas transit ("free transit")
- Allow foreign investors to build pipelines in Russia
- Introduce equal prices for transit of gas for domestic users and for exports
- Cancel gas export tariffs

Source: www.russiajournal.com, 02.03.04

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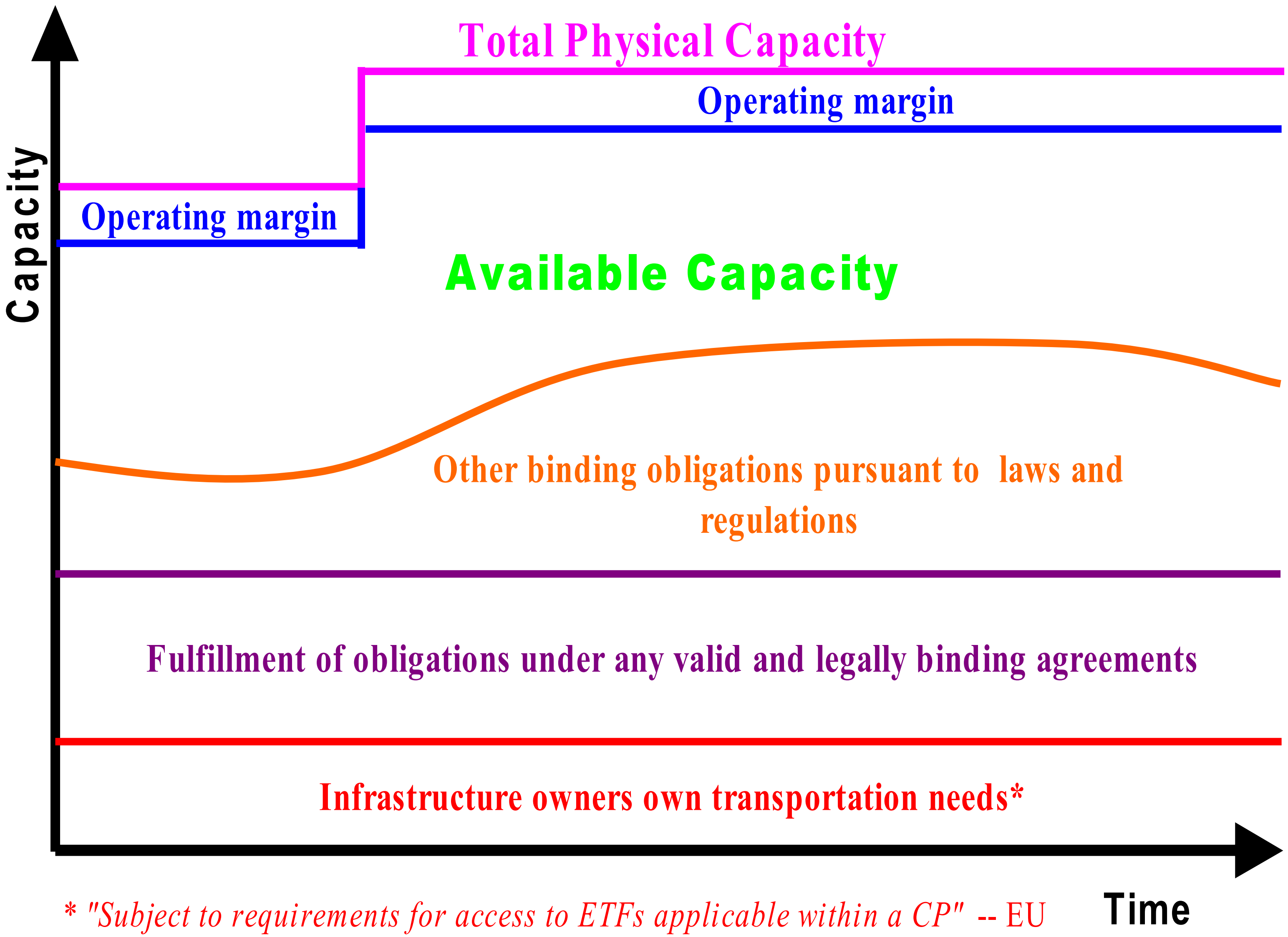
Definition of Available Capacity

(Draft TP Article 1.2 -- CC 251)



* *"Subject to requirements for access to ETFs applicable within a CP"* -- EU

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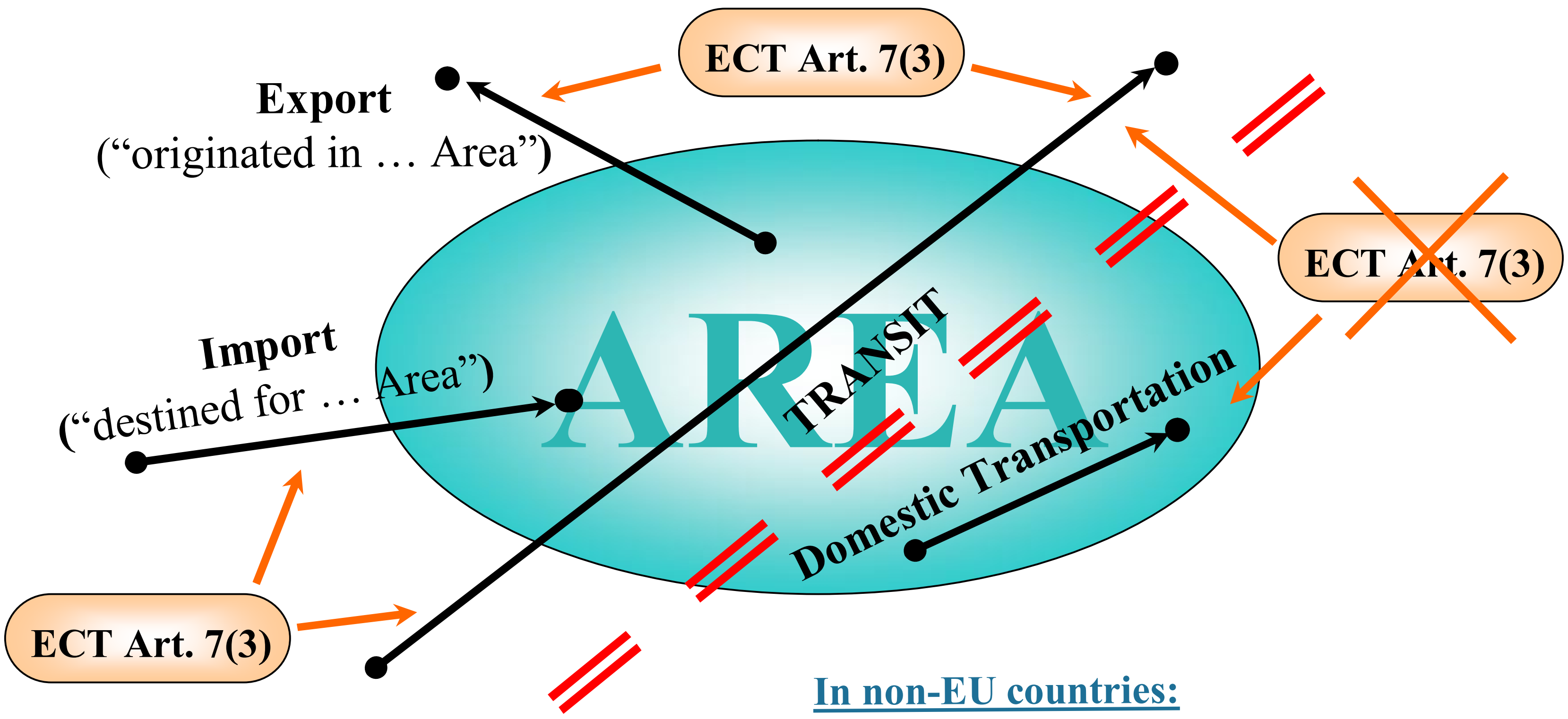
Russia-EU Debate on Tariffs (ECT Art. 7.3)

ECT Article 7(3): **"Each Contracting Party … shall treat EMP in Transit in no less favourable manner than its provisions treat such materials and products originating in or destined for its own Area …"**



In EU countries (with or without REIO):
ECT Art. 7(3) shall apply to all means of transportation (free movement of goods - Treaty of Rome 1958) – but NOT yet in practice

In non-EU countries:
ECT Art. 7(3) shall apply to transit vs. export / import,
ECT Art. 7(3) shall NOT apply to transit vs. domestic transportation

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Conciliation (ECT Art. 7.6/7.7)

Dispute settlement procedure

(a) in the contract

(b) not in the contract

"…dispute over any matter arising from Transit…"

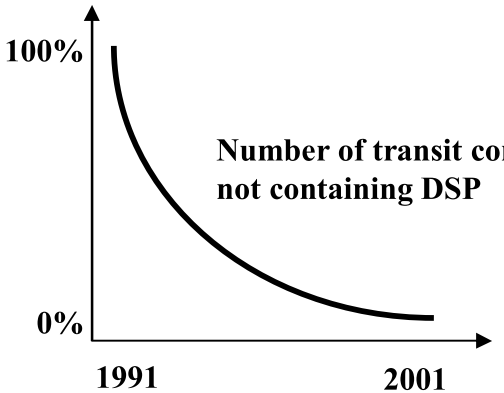
"…all dispute resolution remedies previously agreed…"

END OF DISPUTE SETTLEMENT PROCEDURE

If no "previously agreed" dispute resolution remedies, then straight to Conciliator

CONCILIATOR

Interim decision applicable until dispute is resolved or 12 months (whichever is the earlier)



~100% of transit contracts

~ 0% of transit contracts

ECT conciliation in practice

- Not implemented yet in practice, *but*
- Russia-Ukraine gas dispute (Winter 2005/06):
  - Letter of SG ECS (03 Jan. 2006, just second day of new SG in the office after his election) to both RF & UA (copy to EU as importing-states) proposing conciliation – if necessary (in case no bilateral settlement is achieved),
  - All preparatory work has been done by ECS in advance; principal agreement of RF & UA authorities for conciliation and for candidacy of conciliator received at high/highest political level
  - Conciliation was overcome by events (RF-UA bilateral agreement reached 04 Jan. 2006)
- Russia-Belarus gas & oil disputes (Winter 2006/07):
  - Message of SG to ECT member-states, incl. RF & Bel. (30 Dec. 2006 & 08 Jan. 2007), proposing conciliation – if necessary
  - Preliminary contacts between ECS & RF/Bel. authorities took place – conciliation as back-up option

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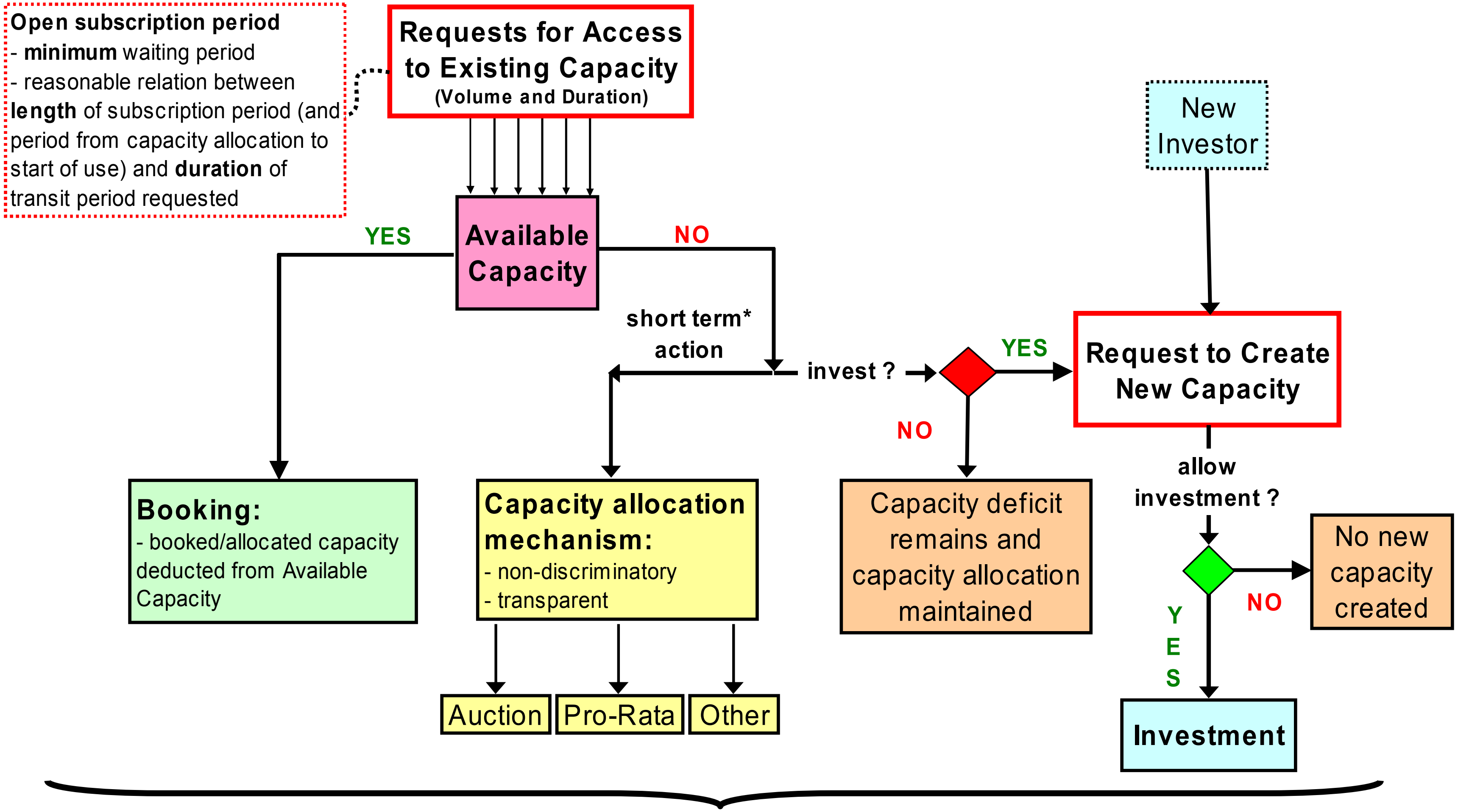
Capacity Allocation and Creation



Prevention of speculative hoarding and capacity blocking e.g. operational use-it-or-lose-it

- ◆ decision by investor
- ◆ decision by state based on objective, transparent and non-discriminatory authorisation procedures or legislation (draft TP Art 9)

* short term: capacity increase not possible within given timeframe

Use of Excess Revenues from Auctions

(Draft TP Article 10bis.3 -- CC 315)

Excess Revenues Generated

reducing or mitigating congestion, including, reasonable measures for maintaining or restoring physical operating capacity

reducing, within a reasonable timeframe, the Transit Tariffs charged for the use of the relevant ETFs

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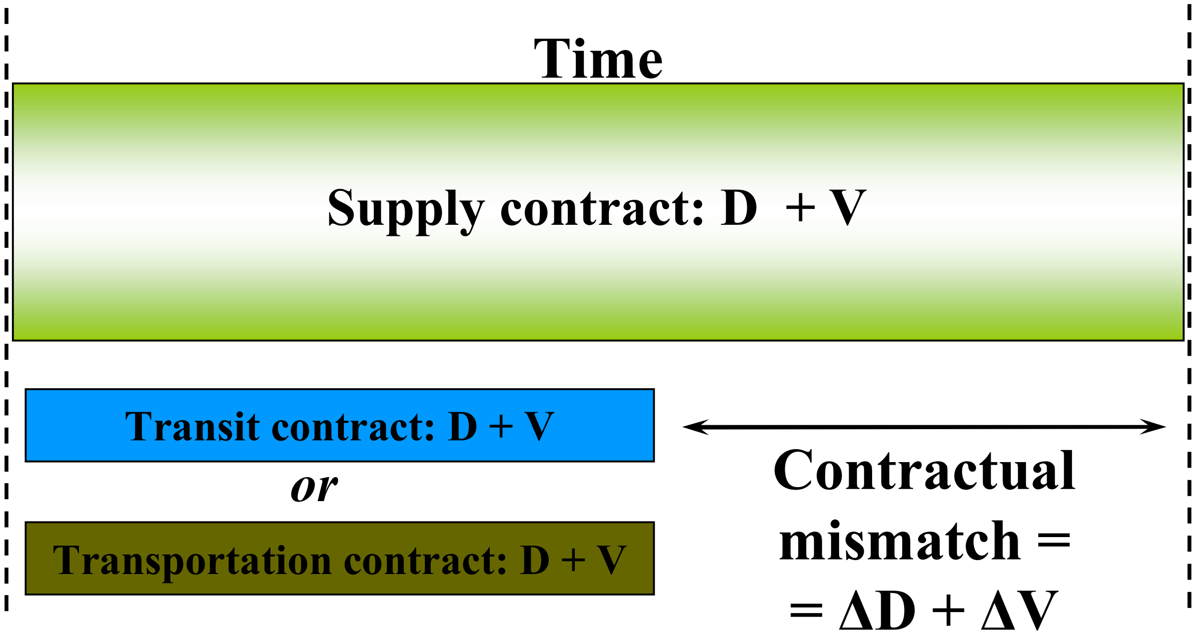
Contractual Mismatch Problem (Draft TP Art.8)



Mismatch: between duration/ volumes (D/V) of long term supply (delivery) contract and transit/transportation contract as integral part to fulfill the delivery contract => risk of non-renewal of transit / transportation contract => risk for supply contract.

Core issue: guarantee of access to / creation of adequate transportation capacity for the duration of long term contracts.

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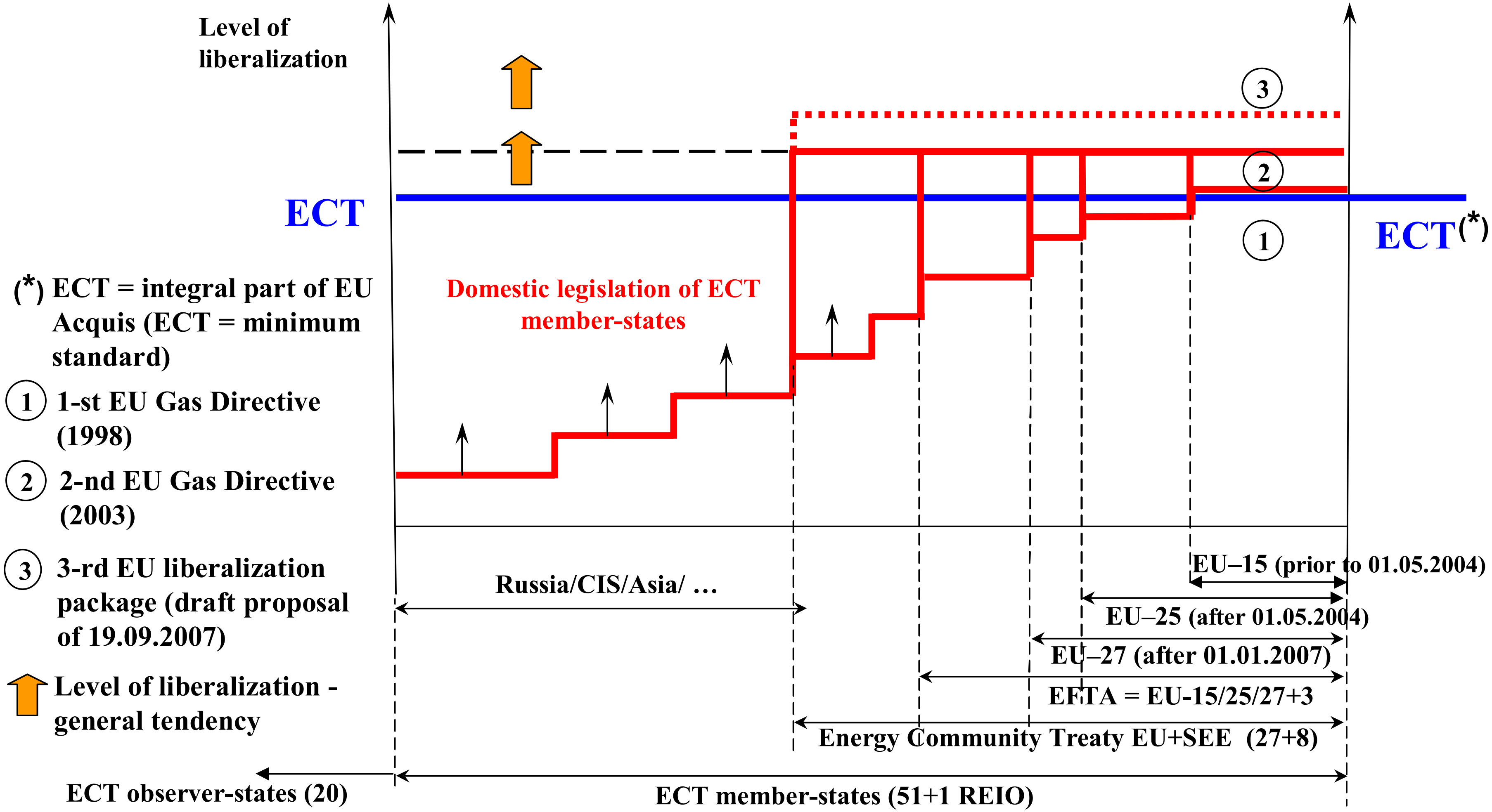
ECT & draft TP: transit & REIO clause

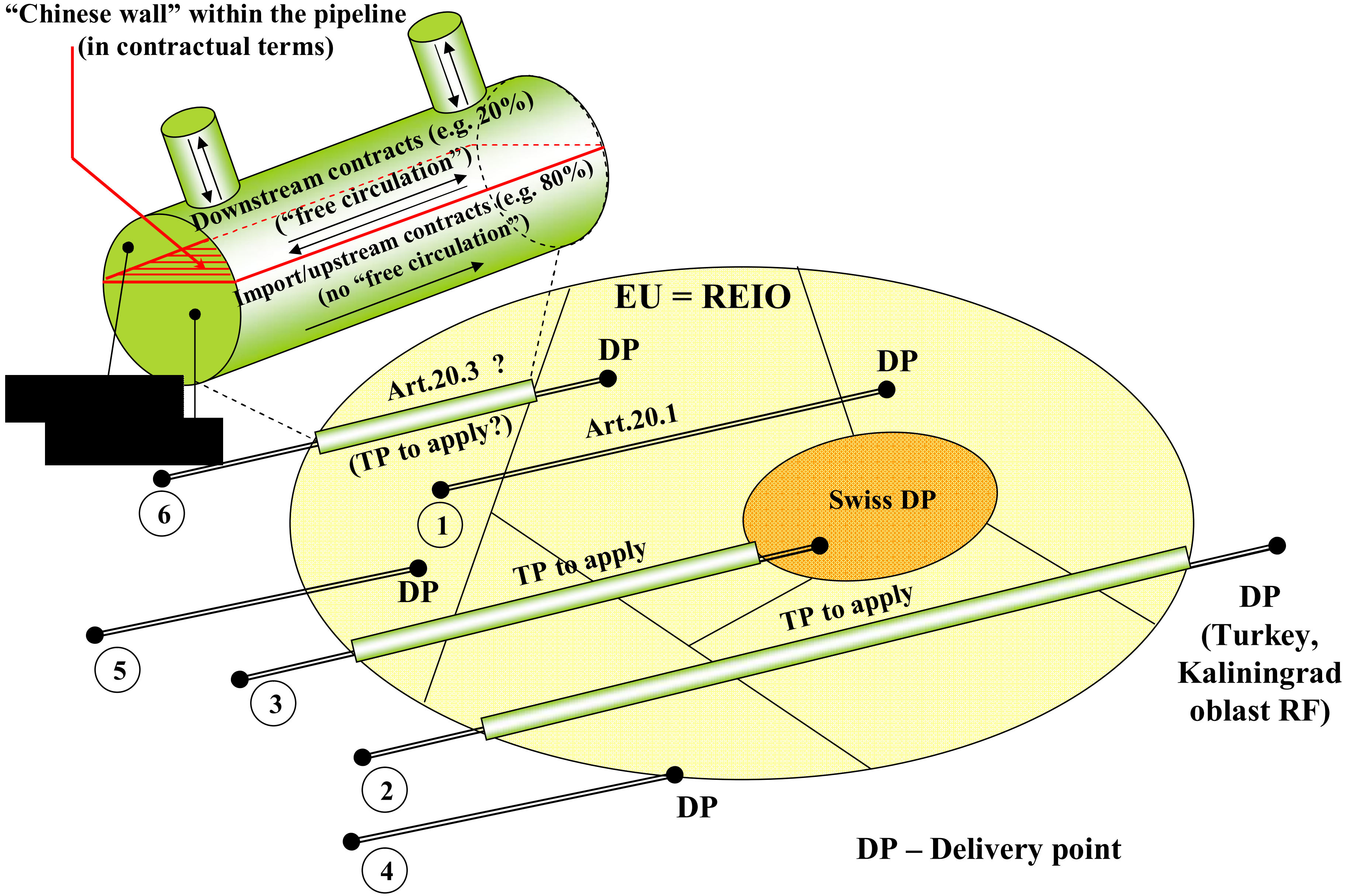
- ECT signed/ratified by both the EU and by individual EU member-states =>
- EU acquis vs. international treaties of EU as REIO => **?**
- disputes between/with EU member-states (ECT CPs & REIO members) vs international arbitration (ECT: ICSID, UNCITRAL, SCC) and/or European Court of Justice => **?**
- Internal non-energy EU issue (REIO clause), ***BUT*** external EU effect for international energy

ECT & EU acquis: "minimum standard" within evolving Eurasian common energy space vs. more liberalized model

Legal norms (examples)	ECT	EU Acquis (2-nd EU Gas Directive)
Mandatory TPA	No	Yes
Unbundling	No	Yes



Possible Scenarios of Hydrocarbons Supplies Destined For and/or Transported Through REIO Territory (1)



Possible Scenarios of Hydrocarbons Supplies Destined For and/or Transported Through REIO Territory (2)

Scenario №	Originated from CP1, located:	Destined for CP2, located:	Location of delivery point (*)	Application of TP within REIO
1	Inside REIO	Inside REIO with transportation through the territory of CP_3	Inside REIO	No (acc. to EU), Yes (acc. to RF), Yes (acc. to ECT)
2	Outside REIO	Outside REIO (with transit through REIO)	Outside REIO	Yes
3	Outside REIO	Non-member of REIO located within REIO territory (Swiss)	Within Switzerland (and/or: on Swiss/REIO border)	Yes
4	Outside REIO	Inside REIO	On the external border of REIO	No
5	Outside REIO	Inside REIO	Within the 1st external REIO member-state (which external border coincide with external border of REIO)	No
6	Outside REIO	Inside REIO	Within the internal REIO member-state (which external border does not coincide with external border of REIO)	Yes (within the first external REIO member-state)? Art.20.3?

(*) The point of change of ownership rights for gas in the pipe (LTGEC)

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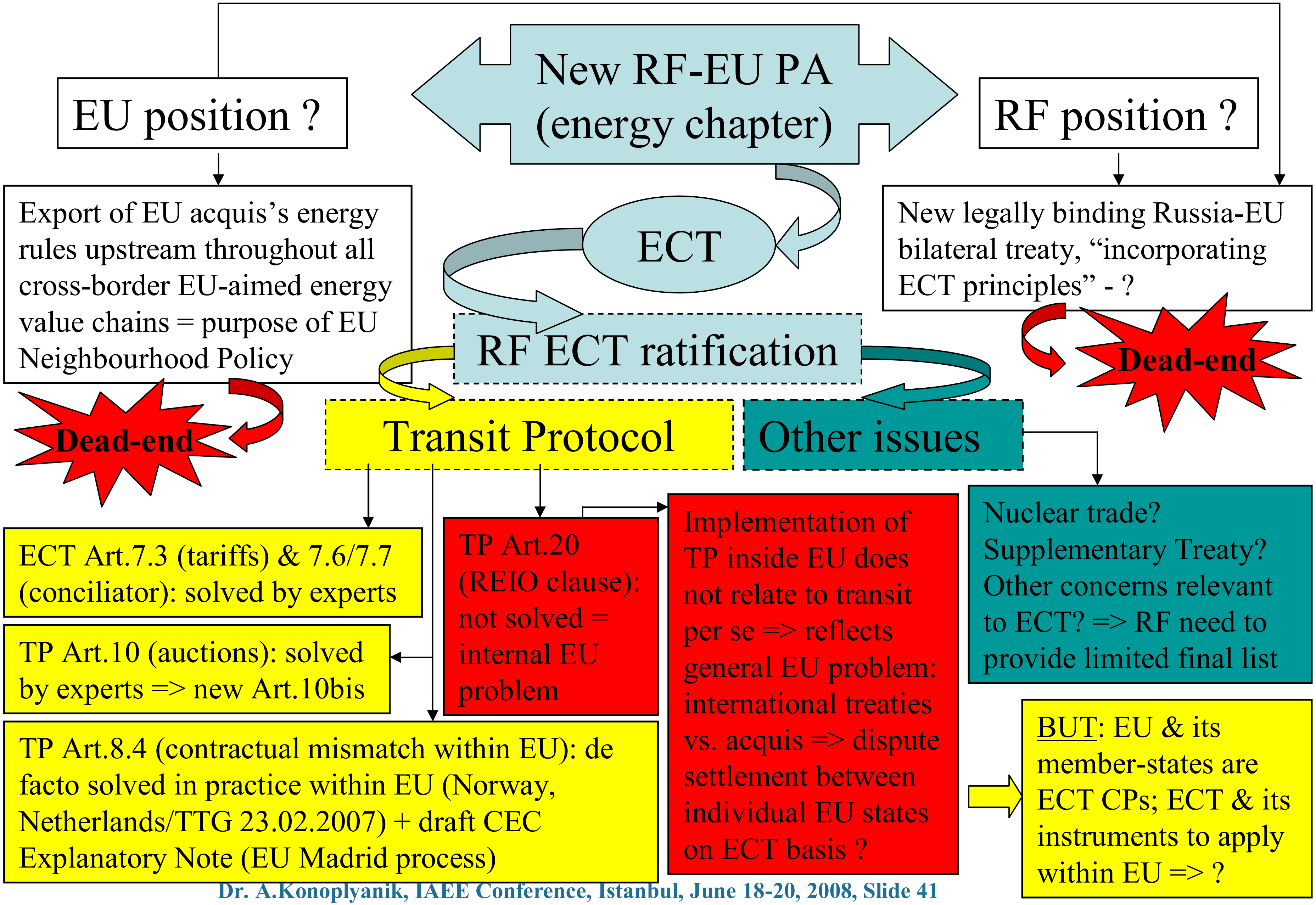
Transit, Russia ECT Ratification & New Russia-EU Partnership Agreement



Thank you for your attention !

On more details - see publications & presentations of Dr.A.Konoplyanik at <www.konoplyanik.ru> and/or (for 2002-2008) at <www.enharter.org/.../selected speeches>

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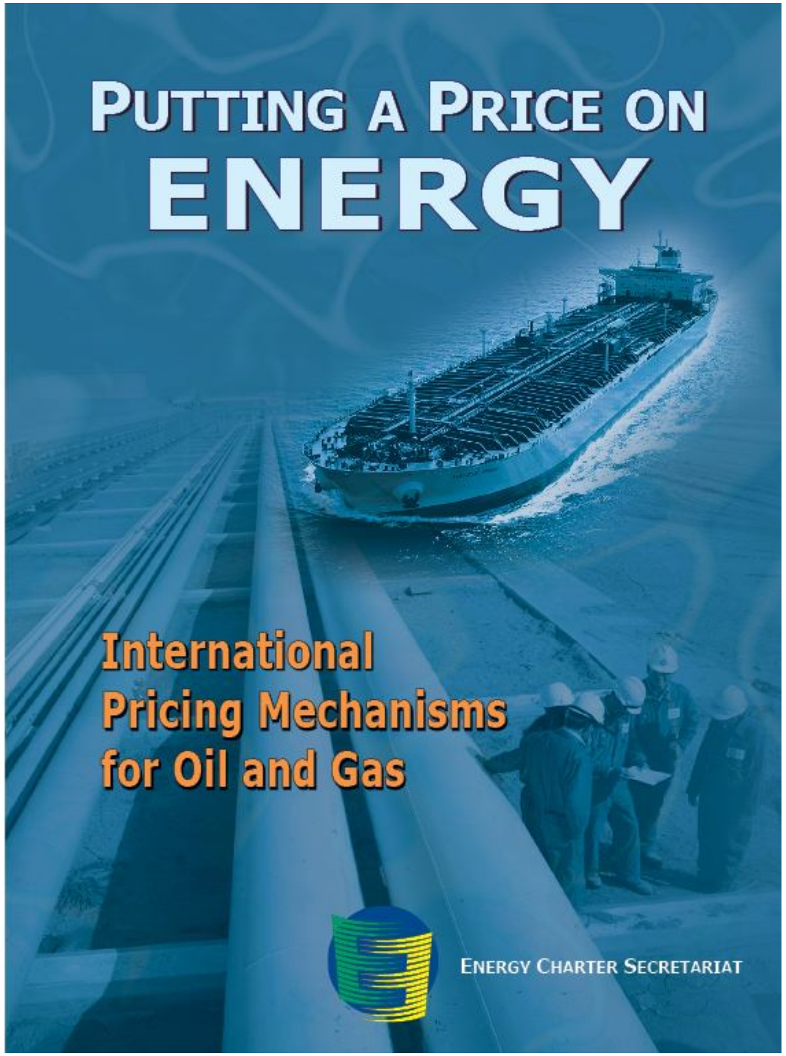
Report on Pricing by the Energy Charter



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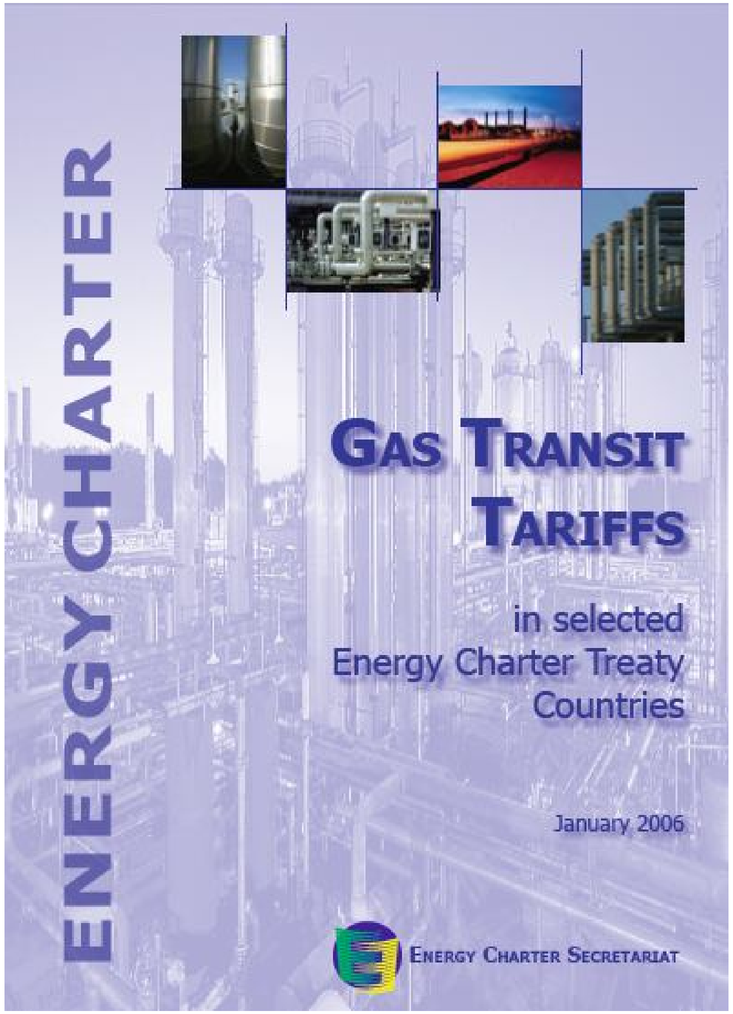

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