

Article 19(2) – Environmental Aspects

General comments and notes regarding the whole Article

In May 1993, Chairman noted that there was general agreement on the Article (ECT 2, CONF 56). Negotiations in the Plenary finished in June 1993 (ECT 3, CONF 60).

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| <p style="text-align: center;">BA-37 (01/03/93) Article 14 – Environmental Aspects</p> |
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A new provision has been added to Article 24 making it clear that the provisions of that Article do not apply to disputes arising from Article 14.

Russian Federation scrutiny reserve pending Russian translation.

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| <p style="text-align: center;">BA-35 (09/02/93) BA-31 (21/12/92) BA-26 (25/11/92) Article 14 – Environmental Aspects</p> |
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The redraft of this Article expresses the outcome of negotiations by an Ad-Hoc Sub-Group on 11 November 1992 taking into account Terms of Reference as indicated in BA-22 and the USA memorandum on various expressions as contained in BA-24. Discussion was based on the premise that Article 14 will not be subject to binding arbitration. Switzerland and Austria delegations expressed their strong reservations on this assumption. The Chairman shall redraft the chapeau to more elegant form while retaining the substance unchanged.

USA general reserve.

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| <p style="text-align: center;">BA-22 (21/10/92) Article 14 – Environmental Aspects</p> |
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To be able to conduct further negotiation of this Article Chairman adopted Working hypotheses based on the following assumptions:

- 1) precautionary and pollution pay principles shall be mentioned in the chapeau;
 - 2) the chapeau (third sentence) will use the word : “shall”;
 - 3) Article 14 will not be subject to binding arbitration.
- CH delegation expressed its strong reservation on item 3.

USA will submit a Memorandum on various expressions used in Article 14 to the Secretariat by 30 October 1992 for circulation.

The Chairman established ad hoc Sub-Group on Article 14 which shall meet probably on 16 or 17 November 1992. The Sub-Group is opened for any delegation which desires to participate. The WGII on 20 October 1992 adopted following Terms of Reference for Sub-Group on Article 14:

- 1) To examine on the basis of a memorandum from the USA the concepts involved in the following expressions in Article 14.

List of expressions:

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| Chapeau, 6 th line | : “in an economically sound manner” |
| 10 th line | : “cost-effective” |
| Subpara c, 2 nd line | : “most cost-effective way” |
| 2 nd &3 rd line (F.N. 14.12) | : “maximize general social benefits” |
| Subpara d, 2 nd line | : “in an economically acceptable way” |
| 4 th & 5 th line | : “economic development and use” |
| Subpara e, 2 nd line | : “economically efficient” |
| Subpara f, 2 nd line | : “energy efficient” |
| 5 th line | : “cost effectively” |
| F.N. 14.18 | : “overall maximalization of net benefits” |

- 2) To make recommendations to WG II on the expression to use when different expressions are used to express the same concept; to identify any occasions where the same expression is used to cover different concepts and make recommendations to remove any resulting ambiguity.
- 3) To propose to WG II in relation to these expressions and the concepts they relate to formulations designed to facilitate as much consensus as possible among the negotiating parties.

USA general reserve.

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| <p style="text-align: center;">BA-15 (12/08/92) Article 14 – Environmental Aspects</p> |
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The new text is the chairman’s compromise mainly based on contributions recorded in BA-14.

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| <p style="text-align: center;">BA 14 (24/06/92) BA-13 (19/06/92) Article 14 – Environmental Aspects</p> |
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The whole article is pending considerations in capitals. The Secretariat has received Norway and USA new proposals on this Article. Since the suggested changes are rather extensive they are not split into footnotes on each subparagraphs but for reasons of clarity included in full

Norway proposal

- 1) The Contracting Parties shall minimize harmful effects on the environment of all aspects of the Energy Cycle in a safe, economically and environmentally sound manner in order to move towards sustainable development. To this end they shall:
 - (a) ensure that environmental impacts are taken account of when formulating and implementing their energy policies, including an appropriate mix of policy instruments;

- (b) establish markets which facilitate a more fully internalisation in energy prices of environmental costs and benefits that occur in the country itself and in the case of transboundary pollution in other countries;
 - (c) through international cooperation and by harmonising measures as appropriate, take into account the differences in environmental impacts and abatement costs between countries when internalising environmental costs;
 - (d) implement policies that minimize in an economically acceptable way the negative environmental Impacts of the Energy Cycle having particular regard to the encouragement of a wider use of renewable sources;
 - (e) promote the dissemination of information on environmentally sound energy policies, practices and technologies to promote public awareness among consumers on environmental Impacts of their behaviour in relation to energy use and consult with each other on how to promote such awareness most effectively;
 - (f) encourage favourable conditions for the transfer and dissemination of information on technology which will reduce harmful environmental impacts of all aspects of the Energy Cycle;
 - (g) promote the use of the most energy efficient environmentally benign technologies that are Economically viable;
 - (h) promote the transparent assessment of environmental impacts of energy Investments projects at an appropriate stage and ensure transparency within their legal and administrative framework;
 - (i) implement appropriate research and development activities including with respect to renewable energy sources and the internalisation of environmental costs in the energy prices;
 - (j) promote internationally awareness and information exchange on Contracting Parties' environmental programs and standards that relate to the energy sector and on the Implementation of these programs and standards;
- 2) Actions of the Contracting Parties relating to the environment shall be based on the precautionary principle and the polluter pay principle and that environmental damage should as a priority be rectified at source.
- 3) The Contracting Parties shall ensure consistency between their energy policies and international agreements to which they are parties and ensure cooperation in order to assess and implement cost effective policy options to achieve joint objectives of energy efficiency and environmental protection.

Norway explanatory notes

In Norway's opinion certain principles and issues of general nature must be reflected in Article 14. These are :

- the precautionary principle,
- the polluter pay principle,
- the principle of internalisation of environmental cost in energy prices,
- the allowance for differences in the scale of environmental cost coverage in energy prices due to differences in environmental impacts of the energy system and related abatement cost between countries,
- cooperation to allow for cost-effective measures to be undertaken across sectors and national boundaries,
- Information exchange on relevant issues.

In sub-paragraph 1(c) Norway mentions the need for international cooperation on the issue of internalising environmental cost in energy prices. This does not however necessarily mean that Norway suggests the establishment of a new body or Institution.

Environmental issues relating to the energy sector have a central part in the Energy Charter. Norway hence emphasizes the need to reflect environmental issues both in the Basic Agreement and in the different sector protocols. Norway position on how to deal with these issues is as follows: Environmental issues of principal and general nature should be dealt with in the Basic Agreement. More sector specific environmental issues should be dealt with in the relevant sector protocols. Other environmental issues which are common to more than one sector protocol should be dealt with in the protocol on "Energy Efficiency and Environmental Aspects of Energy Systems".

USA proposal

- 1) The Contracting Parties shall strive to limit harmful effects on the environment of all aspects of the Energy Cycle in an economically sound manner. To this end each Contracting Party should seek to take into account, in accordance with its domestic policy and consistent with Its other international obligations, the following general principles with regard to environmental aspects of their domestic energy systems. Contracting Parties are encouraged to cooperate with a view to implementing these general obligations:
 - (a) consider environmental concerns through the formulation and implementation of their energy policies Including an appropriate mix of policy Instruments;
 - (b) promote market-price formation in the energy sector and promote research in appropriate fora on methods to quantify and appropriately recognize environmental costs and benefits;
 - (c) promote national energy policies that reduce in an economically acceptable way negative environmental impacts;
 - (d) promote the dissemination of information on environmentally sound and economically efficient energy policies practices and technologies in order to increase public awareness of the environmental Impacts of energy use and ways to reduce adverse impacts and consult with each other on how to promote such awareness most effectively;

- (e) encourage favorable conditions for the commercial transfer and dissemination of technology which will reduce harmful environmental impacts of all aspects of the Energy Cycle taking account of the need for adequate and effective protection of Intellectual Property rights,
 - (f) encourage the formulation and implementation of policies that foster innovation in the research and development of environmentally sound and economically efficient energy technologies, including renewable energy resources;
 - (g) promote transparency in assessment programs of environmental impacts of their energy Investment at an early stage;
 - (h) promote internationally awareness and information exchange on Contracting Parties' environmental programs and standards that relate to the energy sector and on the implementation of these programs and standards.
- 2) Contracting Parties should, where feasible and economically justified, seek to adopt precautionary approaches to environmental problems associated with energy systems and to rectify such problems at the source.

USA explanatory notes

The draft seeks to preserve the spirit and thrust of the current text, but to resolve certain problems and awkward formulations that had been noted during review in Washington. Specifically:

- 1) A revised chapeau makes clear that the obligations are of a general, rather than specific nature, that they pertain to energy and the environment and that they are not meant to condition the Parties' obligations contracted in environmental policy fora.
 - b) Combines the intent of (b) and (h) of current draft. Emphasizes the need for research in the area of appropriate, non-trade distorting methods of internalizing environmental costs in price formation.
 - c) As revised, encourages the Parties to promote domestic policies that reduce negative environmental impacts. Original wording raises serious sovereignty and trade concerns about the mechanisms needed to fulfil these requirements.
 - d) Labelling schemes best considered a trade issue.
 - e) Encourages research into appropriate technologies, including renewable energy sources.
 - f) Former (i)
- 2) Emphasizes adoption of precautionary approaches to problems associated with energy systems rather than the broad environmental statement that included "precautionary principle" and "polluter pays". The revised version is consistent with language in the Framework Convention on Climate Change.
- 3) Eliminated. Paragraph in the current draft could be interpreted to mean this agreement must be consistent with international environmental agreements. Basic Agreement should be squarely focused on trade and investment issues, with general parameters on environmental issues to serve as guiding principles. Specifics should be left to international environmental agreements.

BA-12 (09/04/92)
Article 14 – Environmental Aspects

The whole Article is pending considerations in capitals.

BA-6 (21/01/92)
Article 14 – Environmental Aspects

New Article redrafted by Chairman on basis of Switzerland suggestion. Scrutiny reserve by all delegations. The substance and need for such an Article supported by Austria, Netherlands, USA.

Article 19.2

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| ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 19.2 – Environmental Aspects | Interim text (25/06/94) Interim text (20/06/94) Compromise text [CONF 98] (22/04/94) Article 22.2 – Environmental Aspects |
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At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Charter Conference aiming at a solution.

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| ECT 7 [CONF 96] (17/03/94) ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/01/93) ECT 4 [CONF 64] (07/07/93) ECT 3 [CONF 60] (01/06/93) ECT 2 [CONF 56] (01/05/93) Article 22.2 – Environmental Aspects |
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[At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Charter Conference aiming at a solution.]¹

¹ Norway maintains its proposal as contained in the Plenary Room Document 7 of 26 April 1993.