

Article 20 (2) – Transparency

Notes and General Comments regarding the whole Article

Negotiations in the Plenary finished in May 1993 (ECT 2, CONF 56).

<p>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) ECT 3 [CONF 60] (01/06/93) ECT 2 [CONF 56] (01/05/93) Endnote* to Article 23 – Transparency</p>
--

Norway contingency reserve.

<p>BA 37 (01/03/93) BA 35 (09/02/93) BA 31 (21/12/92) BA 26 (25/11/92) Chairman's note + Endnote* to Article 15 – Transparency</p>
--

Subject to the 2 specific reserves negotiations finished in WG II. The Article is being referred to the Legal Sub-Group.

EC reserve.

<p>BA 22 (21/10/92) Chairman's note + Endnote* to Article 15– Transparency</p>

Subject to the 3 reserves negotiations finished in WG II.

EC reserve

<p>BA 18 (18/09/92) General Comment to Art. 15 – Transparency</p>
--

USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

<p>BA 15 (12/08/92) BA 14 (24/06/92) BA 13 (19/06/92) Note and General Comment to Art. 15 – Transparency</p>

Subject to USA alternative redraft.

* *Ed. note*: Endnote is included at the end of the Draft.

USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

BA 12 (09/04/92)
Note and General Comment to Art. 15 – Transparency

Subject to USA alternative redraft (see general comments in Article 5)*

USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

BA 6 (21/01/92)
Note and General Comment to Art. 15 – Transparency

Former paragraph (4) deleted.

USA asks provisionally for including a commitment to provide an opportunity for Investors to comment before the adoption of additional regulations having general effect.

BA 4 (31/10/91)
Note and General Comments to Art. 12 – Transparency

Former paragraphs (4) and (5) dropped. New para (4) suggested by Chairman. The paragraph has been retained to meet the sentiment expressed in the Charter text on such transparency while removing any immediate detailed obligation. Contracting Parties will return to the question in appropriate Protocols.

Japan: “published promptly” in (1) should be more clearly specified.

Switzerland: the information should be available to the private sector.

USA: should include a commitment to provide an opportunity for investors to comment before the adoption of additional regulations having general effect.

BP 2 (11/09/91)
Explanatory Memorandum

Article 12(1) requires that Contracting Parties publish certain categories of information that relate to the production, distribution or use of Energy Materials and Products. (Source: GATT Article X),

Article 12(2) grants an exception to the preceding requirement, where the disclosure of information might impede law enforcement or otherwise be contrary to the public interest or to law, or prejudice legitimate commercial interests of particular enterprises. (Source: GATT Article X)

* *Ed. note:* Content of general comments in Article 5:

“Since many delegations, including Russian Federation considered in particular drafting of para (2) inadequate, the Chairman suggested two alternatives approaches to be discussed at the next meeting:

- alternative A: the current draft with added footnotes;
- alternative B: based on USA draft which would implicitly replace a number of other BA provisions.”

Article 12(3) requires contracting Parties to establish a central enquiry point where requests for relevant information may be addressed, and to inform the Charter secretariat of the details of this enquiry point.

Article 12(4) requires Contracting Parties to notify the charter secretariat of all laws and regulations relevant to the Basic protocol (and details of where such information may be obtained), plus any amendments to this information and reports on the implementation of energy policies.*

Article 27 extends the provisions of Article 12 (“Transparency”) to Investors and Investments.

* *Ed. note:* Basic Protocol and BP 2 contained an additional paragraph 12.4, which disappears in BP 4:

“In respect of the matters the subject of this Agreement each Contracting Party shall notify the Secretariat established under Article 30 below of all laws and regulations applicable in its Territory and where enquiries about such laws and regulations should be directed, any amendments made to such laws or regulations from time to time, and information, at intervals to be determined by the Governing Council referred to in Article 28 below, on the implementation of its energy policies as defined in Article 6 above.”

Article 20.2

ECT as adopted (17/12/94) CONF 104 (Text for adoption) (14/09/94) Article 20.2 – Transparency	Interim Text (25/06/94) Interim Text (20/06/94) Compromise text [CONF 98] (22/04/94) Article 23.2 – Transparency
---	--

Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Treaty shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

ECT 7 [CONF 96] (17/03/94) Article 23.2 – Transparency <i>Chairman's note to Article 23</i>
--

Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Agreement shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

Chairman's note

Legal Sub-Group advises that present wording of first sentence of paragraph (2) is satisfactory (see CONF 82).

ECT 6 [CONF 82] (20/12/93) ECT 5 [CONF 72] (11/10/93) Article 23.2 – Transparency <i>Chairman's note to Article 23</i>

Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Agreement shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

Chairman's note

The Legal Sub-Group was asked by the Plenary Chairman to revisit the text of paragraph (2) in order to draft a language that only those judicial decisions or administrative rulings be published

that have a general effect in the sense that they contain information that is relevant to how the Contracting Party would in the future discharge obligations under the Charter Treaty.

ECT 4 [CONF 64] (07/07/93)
ECT 3 [CONF 60] (01/06/93)
ECT 2 [CONF 56] (01/05/93)
Article 23.2 – Transparency

Laws, regulations, judicial decisions, and administrative rulings or standards of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Agreement shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

(Compromise text) ECT 1 [CONF 50] (15/03/93)
Article 23.2 – Transparency

Laws, regulations, judicial decisions, and [DL] administrative rulings or standards of general application made effective by any Contracting Party, and agreements in force between [DL] Contracting Parties, which [DL] affect other matters covered by this Agreement shall also be [DL] published promptly in such a manner as to enable [DL] Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph [DL] shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of [DL] any Investor.

BA 37 (01/03/93)
BA 35 (09/02/93)
BA 31 (21/12/92)
BA 26 (25/11/92)
BA 22 (21/10/92)
Article 15.2-3 – Transparency

- (2) Laws, regulations, judicial decisions, and generally applicable administrative rulings or standards made effective by a Contracting Party, [and agreements in force between a Contracting Party and one or more other Contracting Parties,]¹ which relate to other matters covered by this Agreement shall also be made public promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them.
- (3) The provisions of paragraphs (1) and (2) above shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

¹ General scrutiny reserve.

BA 18 (18/09/92) Option B
Article 15.2 – Transparency

- (2) Each Contracting Party undertakes that other laws, regulations, judicial decisions, and administrative rulings and standards of general application which are made effective by that Contracting Party, which relate to the production, import, export, conversion, distribution, investment, or use of [Energy Materials and Products], shall be made public promptly in such a manner as to enable other Contracting Parties and Investors to become acquainted with them.
- (3) The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

BA 18 (18/09/92) Options A and C
BA 15 (12/08/92)
BA 14 (24/06/92)
BA 13 (19/06/92)
BA 12 (09/04/92)
BA 6 (21/01/92)
Articles 15.2 – Transparency

[The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information in such a way as to impede law enforcement or otherwise be contrary to the public interest or to law, or to prejudice the legitimate commercial interests of particular public or private enterprises]².

BA 4 (31/10/91)
BP 2 (11/09/91)
Article 12.2 – Transparency
Article 27 – Investment Transparency

The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information in such a way as to impede law enforcement or otherwise be contrary to the public interest or to law, or to prejudice the legitimate commercial interests of particular public or private enterprises.

Article 27 – Investment Transparency

For the avoidance of doubt, the provisions of Article 12 above shall also apply to laws, regulations, judicial decisions and administrative rulings of general application affecting the Investments and Investors of any Contracting Party in the Territory of another Contracting Party.

² **Canada** would prefer wording closer to GATT provisions if possible.

<p style="text-align: center;">Basic Protocol (26/08/91) Article 10.2 – Transparency Article 25 – Investment Transparency</p>
--

The provisions of paragraph (1) above shall not require any Contracting Party to disclose confidential information in such a way as to impede law enforcement or otherwise be contrary to the public interest or to prejudice the legitimate commercial interests of particular public or private enterprises.

Article 25 – Investment Transparency

For the avoidance of doubt, the provisions of Article 10 above shall also apply to laws, regulations, judicial decisions and administrative rulings of general application affecting the Investments and Investors of any Contracting Party in the Territory of another Contracting Party.