

ROYAL MINISTRY OF FOREIGN AFFAIRS, OSLO

RE-135

Telefax: +47 22 34 95 80/81
Telex: +71004
Telephone: +47 22 34 36 00

94 1346

PRIORITY: VERY URGENT

DATE: 2 AUGUST 1994

NR:

TO: - MR. CRAIG BAMBERGER
(FAX: 095-33-1-45 24 ~~9422~~) 9032

- MR. GUUS HOUTTUIN
(FAX: 095-32-2-285 73 94)

COPY TO:

RESPONSIBLE DIV: LEGAL AFFAIRS

OUR REF.: HANS WILHELM LONGVA
DEPUTY DIRECTOR GENERAL

YOUR REF.:

SUBJECT: ENERGY CHARTER TREATY. ARTICLE 21.

Reference is made to Craig Bambergers telefax of 1 August 1994.

In the light of the political sensitivities of the issues involved, I am compelled to advise strongly against the circulation to the members of the LSG of the drafts forwarded with the above-mentioned telefax.

It should be clearly stated that article 21(2) is intended to affect the interpretation and application of other articles of the ECT. We understand the mandate of the LSG to be to clarify the effects of article 21(2) on the interpretation and application of other articles of the ECT. The LSG is also authorized to suggest possible Understandings or Decissions which may clarify those effects and avoid other and unintended effects on the application of the ECT as a whole. The LSG is not at this time authorized to suggest possible changes in the text of article 21. It is also clear that under no circumstances will the LSG be authorized to suggest

changes in the text of article 21 which will reopen the policy issues which the article is intended to solve.

As you are aware of article 21 is of an utmost importance to Norway and reflects in its present drafting the bottom line of what Norway can accept if we are to sign and ratify the ECT. You will be aware that article 21(2) is based on article 222 of the EC Treaty with a few amendments proposed by the European Union and accepted by Norway. The legal advice received and circulated by the Conference Chairman contains incorrect information with respect to the legal material on which article 21(2) is based.

Norway strongly objects to the statement contained in the legal advice received and circulated by the Conference Chairman to the effect that article 21(2) "fundamentally conflicts with some of the most basic and important obligations of the ECT, and poses a very serious threat to the success of the Treaty". We cannot see that there is any basis for such a statement, which can easily be seen as an expression of opinion on policy issues. We feel that it is of the utmost importance that the LSG avoids expressing opinions on sensitive policy issues in carrying out the mandate it has received from the Conference Chairman.

Norway also objects to the interpretation of Norway's obligations under its Treaty of Accession with the European Communities which is contained in the legal advice received by the Conference Chairman, and to the fact that such an interpretation is included in the legal advice and given a further distribution by the Conference Chairman.

The mandate given to the LSG by the Conference Chairman is both important and sensitive. The carrying out of the mandate is being followed carefully by the political authorities in Norway. I therefore would like to suggest the following procedure:

1) The representatives in the LSG of the legal services of the Council of the European Communities, of the European Commission and of Norway are requested to submit papers on the relationship between article 21(2) and the other articles mentioned in Craig Bambergers draft, namely articles 6, 13(2), 13(5), 13(7), 15(1) and 25. They should spell out both the intended effects and possible unintended/unwarranted effects of article 21(2) on the interpretation and application of these articles. To the extent possible the preparation of these papers should be coordinated between the Legal Services of the Council and of the Commission and Norway.

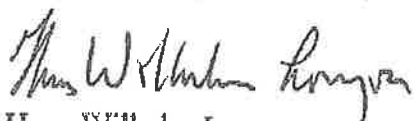
2) Based on these contributions the Chairman of the LSG should prepare a draft report which should be submitted to the members of the LSG for comment and possible approval.

3) If necessary the LSG could meet in the course of the week starting 29 August 1994 for finalization and approval of the report.

I should like to stress that in our opinion it will not be possible to carry out the mandate given to the LSG by the Conference Chairman in a satisfactory manner if the report is to be finalized before the LSG Chairman departs on leave on 12 August 1994.

I send you my best personal regards.

Yours sincerely



Hans Wilhelm Longva

Deputy Director General

NOREG