

EUROPEAN ENERGY CHARTER CONFERENCE SECRETARIAT	
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FOREIGN AND COMMONWEALTH OFFICE

ENVIRONMENT SCIENCE AND ENERGY DEPARTMENT (ESED)

ESED FAX NO. (071) 210 4744

DATE ..1-9-94.. TIME3-50.....

THIS TRANSMISSION CONSISTS OF ..2... PAGES PLUS LEADER
FROM DOUG. SCRAFTON., ESED, FCO, LONDON

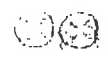
TELEPHONE NUMBER: (071) 210 0446

- TO (1) Ambassador, Hungary. FAX NO .47.22.34.95 80.
 (2) Dr. Ulf. Boge. Bonn FAX NO .49.228.615.2148
 (3) M. Michel. Ayrat. European Commission FAX NO .010.322.295.0150
 (4) Sr. Massimo Parnissari - Council Sec - 010 322 285 7381
 (5) MR Clive Jones - Council Sec - 010 322 236 6261

PRECEDENCE CLASSIFICATION ...4/6...

REQUEST/FURTHER INFORMATION.....

Any enquiries on this fax message please ring (071) 210 0446





1 September 1994

Foreign &
Commonwealth
OfficeLondon SW1A 2AH
Telephone: 071- 210-0431Ambassador Hans Wilhelm Longva
Royal Ministry of Foreign Affairs,
Oslo*Dear Hans Wilhelm,*

EUROPEAN ENERGY CHARTER TREATY: ARTICLE 21

1. When we met in Brussels on 30 August, I apologised to you for not replying to your letter of 8 August, which was awaiting me when I returned from leave. Enclosed with your letter was a PM on Article 21 which I understand has also been sent to a number of Community partners, the Conference Secretariat and members of the Legal Sub-Group.
2. Since you wrote, you will have seen Robin Ford's letter of 12 August to Craig Sambergor commenting on his draft paper of 3 August on paragraph (2) of Article 21. This paragraph was also discussed thoroughly during this week's EC High Level Working Group meeting, and I have nothing further to add at this stage. As I mentioned to you, however, there is one other point raised by your PM on which the United Kingdom would like to comment.
3. In your PM you state that the issue of "access to energy resources" is exhaustively regulated in Article 21. We do not accept this view and, indeed, strongly refute it. In our view, Article 21(4) is purely declaratory. "Investments" are defined to include "any right conferred by law with respect to any Economic Activity in the Energy Sector, or conferred by contract or by virtue of any licences and permits granted pursuant to law". Therefore, Article 13 concerning investments covers all investments, including those with respect to the acquisition of licences for exploration and extraction. It follows that national treatment is to apply to the making of all investments, as it will under the EC Hydrocarbons Directive, though under the ECT on a "best endeavours" basis until the second treaty comes into force. That is not to say that the state should not participate in the development of energy resources, as long as it otherwise complies with the ECT.
4. Given the distribution of your PM, I am copying this



letter to the Presidency of the European Union, the European Commission, and to the Council Secretariat with a request that they circulate it to other Member States. I am also sending a copy to the Secretary-General of the European Energy Charter Conference, for further dissemination to other recipients of your PM.

With warm personal regards,

Yours sincerely,

D. S.

D Scrafton
Environment, Science and Energy Department

cc Dr Ulf Boge, Bundesministerium für Wirtschaft, Bonn
M Michel Ayrat, DG XII, European Commission
Sr Massimo Parnissari, Council Secretariat
Mr Clive Jones, European Energy Charter Conference
Secretariat