

**ENERGY CHARTER  
SECRETARIAT**

---

CCDEC 2018

21 NOT

---

Brussels, 27 November 2018

Related documents: CC 634 Rev, CC 641
------------------------------------------

**DECISION OF THE ENERGY CHARTER CONFERENCE**

**Subject: Report by the Chair of the Subgroup on Modernisation**

The Energy Charter Conference at its 29<sup>th</sup> Meeting held on 27-28 November 2018 **took note** of the Report by the Chair of the Subgroup on Modernisation as contained in document CC 634 Rev (attached hereto).

Keywords: Report, Chair, Subgroup on Modernisation

## **REPORT BY THE CHAIR OF THE SUBGROUP ON MODERNISATION**

1. In November 2017, the Energy Charter Conference confirmed in Ashgabat the launching of a discussion on the potential modernisation of the Energy Charter Treaty (ECT). Within the framework set out by the Conference (CCDEC2017 23), it was also agreed to establish a subgroup of the Strategy Group to centralise and conduct the discussions in the most effective way.
2. The Subgroup on Modernisation convened six times in 2018: on 2 February, 23 March, 14 May, 15 May, 5 July and 6 of September. At its first meeting, the Subgroup confirmed the nominations of Ms. Sofía Sanz Estébanez and of Mr. Sunao Orii as Chair and Vice-Chair of the Subgroup.
3. In addition, the Subgroup reported to the Strategy Group both on 22 March (when some procedural issues were considered) and 25 October (when final list of topics was recommended for approval by the Conference). There were also some discussions at the Budget Committee meeting of 6 July regarding financial planning for the potential negotiations of an amendment to the ECT and/or other tools (legally and/or non-legally binding).
4. Following the mandate of the Conference (CCDEC2017 23), some of the meetings of the subgroup took the format of consultation with the Observers (2 February) and the industry –through the Industry Advisory Panel– (14 May). Particular reports were prepared with the conclusions of those consultations (documents MOD 2 and 5). In addition, the Industry Advisory Panel circulated a position paper on the potential modernisation of the ECT, which was considered by the Subgroup and that is also annexed to the Report of the Industry Advisory Panel to the Conference (document CC 636).
5. After several substantial discussions, on 6 September 2018, the Subgroup on Modernisation confirmed the draft list of topics for the discussion on the modernisation of the ECT. On 25 October, the Subgroup reported to the Strategy Group on the successful completion of the first stage of the modernisation exercise and the Strategy Group recommended the approval of the list of topics by the Conference.
6. As requested by the Conference (CCDEC2017 23), the discussions took into consideration all the provisions of the ECT and not only the investment protection standards. This is reflected in the final list of topics identified:
  - ✓ Pre-investment
  - ✓ Definition of ‘charter’
  - ✓ Definition of ‘economic activity in the energy sector’

- ✓ Definition of investment
- ✓ Definition of investor
- ✓ Right to regulate
- ✓ Definition of Fair and Equitable Treatment (FET)
- ✓ MFN Clause
- ✓ Clarification of ‘most constant protection and security’
- ✓ Definition of indirect expropriation
- ✓ Compensation for losses
- ✓ Umbrella clause
- ✓ Denial of benefits
- ✓ Transfers related to investments
- ✓ Frivolous claims
- ✓ Transparency
- ✓ Security for costs
- ✓ Valuation of damages
- ✓ Third party funding
- ✓ Sustainable development and corporate social responsibility
- ✓ Definition of ‘transit’
- ✓ Access to infrastructure (including denial of access and available capacities)
- ✓ Definition and principles of tariff setting
- ✓ REIO<sup>1</sup>
- ✓ Obsolete provisions

7. After approval by the Conference of the list of topics for the modernisation of the ECT, the Subgroup will continue working in order to identify the potential policy options for each of the topics listed (including the context and the potential instrument to be used – clarification by a declaration of the Conference or an amendment to the ECT–). With the aim of properly considering available policy options and to better frame discussions, it is expected that the current main international trends will be used as a primary reference.
8. Once the policy options have been identified, Members of the Conference will be invited to confirm (if possible during the 2019 review under article 34.7 of the ECT) their political will to start negotiations based on the identified list of topics and their specific policy options.

---

<sup>1</sup> It was clarified that it refers not to the definition of REIO, but to consider which ECT provisions (if any) should not apply among members of a REIO.