



## **PUBLIC COMMUNICATION ON THE TENTH NEGOTIATION ROUND OF THE MODERNISATION OF THE ENERGY CHARTER TREATY**

On 18-21 January 2022, the Tenth Negotiation Round on the modernisation of the Energy Charter Treaty (ECT) was held by videoconference.

The following topics were addressed:

- *Investment protection*
  - *Definition of ‘Investment’*
  - *Definition of ‘Fair and Equitable Treatment’*
  - *Definition of indirect expropriation*
  - *Denial of benefits*
  - *MFN clause*
  - *Right to regulate*
  - *Umbrella clause*
- *Definition of ‘Economic Activity in the Energy Sector’*
- *Transit*
  - *Definition of ‘Transit’*
  - *Access to infrastructure (including denial of access and available capacities)*
  - *Definition and principles of tariff setting*
- *Regional Economic Integration Organization (REIO)*

The Modernisation Group discussed the aforementioned topics on the basis of draft compromise proposals, submissions and comments provided by the delegations, taking into account the progress made in the previous Negotiation Rounds.<sup>1</sup>

The Modernisation Group made good progress on the “Definition of Investment”, “Definition of indirect expropriation”, “Denial of benefits” and “MFN clause”. Further discussions with respect to the “Definition of Fair and Equitable Treatment (FET)” will continue based on a compromise text. Against this backdrop, delegations decided that the “Umbrella clause” would be discussed in one of the next meetings given its close connection to FET. The Modernisation Group advanced its discussions on the “Right to regulate” taking into account relevant text proposals for related articles. In addition, proposals regarding general and security exceptions under Article 24 of the ECT were considered.

The Modernisation Group achieved good progress on the “Definition of Economic Activity in the Energy Sector” by narrowing down the options prepared by the Secretariat to implement the flexibility considered necessary by individual Contracting Parties, including with respect to

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<sup>1</sup> For public communications with respect to the previous Negotiation Rounds, please consult <https://www.energychartertreaty.org/modernisation-of-the-treaty/>.

the scope of investment protection for fossil fuels in their territories, taking into account their individual energy security and climate goals.

Within the context of REIO, the Modernisation Group continued to consider transit obligations and the application of dispute settlement under the ECT. The topics related to Transit were discussed taking into account a new text proposal.

The next Round of Negotiations is scheduled to take place on 1-4 March 2022 via videoconference. In accordance with the work plan of the Modernisation Group, further negotiation rounds are scheduled for 19-22 April and 17-20 May 2022 before the ad hoc Energy Charter Conference in June 2022 aiming at reaching the agreement in principle.<sup>2</sup>

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<sup>2</sup> [CCDEC202138.pdf \(energycharter.org\)](#)