



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

On 1-4 March 2022, the Eleventh Negotiation Round on the modernisation of the Energy Charter Treaty (ECT) was held by videoconference.

At the beginning of the negotiation round, the Modernisation Group expressed its solidarity with and offered its help to the Ukrainian colleagues, who could not fully participate in the discussions.

Several Contracting Parties, including the European Union and its Member States, Japan, the United Kingdom and Switzerland, condemned in the strongest possible terms the unprecedented military aggression of the Russian Federation against the ECT's Contracting Party Ukraine. By its unprovoked and unjustified military actions, the Russian Federation is grossly violating international law and undermining European and global security and stability. Delegates further stressed that they hope for a swift diplomatic resolution of the current situation.

The delegate from Ukraine informed the participants of the 11th round of modernization of the ECT about the current catastrophic results of the Russian military invasion of the sovereign territory of Ukraine on 24 February 2022: about the Russian attacks on social facilities, residential buildings, social and energy infrastructure facilities, and about the numerous victims of the population. He also informed about the possible threats of the Russian invasion of Ukraine for the whole of Europe and the world, including in the field of energy security, which may be caused by the seizure of nuclear power plants in Ukraine, the destruction of gas transportation and other oil and gas infrastructure, as well as the further purchase of Russian energy resources, and the sale of new energy projects of the Russian Federation (for example, the Nord Stream-2 gas pipeline), which cast doubt on the efforts of the delegates participating in the rounds of negotiations on the modernization of the ECT and the development of other international legislation. He also added that against the backdrop of international assistance provided to Ukraine, the further purchase of Russian energy resources (oil and gas) enables the Russian Federation to continue to ignore the implementation of international treaties with the possibility of their further escalation of aggression against any participant in international relations. Finally, he concluded that otherwise, Europe may become a witness to a large-scale technogenic disaster, as well as an object to which the threat of a military invasion of the Russian Federation will spread.

The delegate from Ukraine called for consolidating the efforts of the delegates and the Energy Charter Secretariat, as soon as possible, to adopt a resolution that would allow identifying quick solutions to reduce the number of victims, stop the military operations of the Russian Federation on the territory of Ukraine and de-escalate the conflict exclusively through negotiations.

The Energy Charter Secretariat assured its full support, within its mandate, and referred to a [communication](#) inviting the Russian Federation to seek resolution of the current emergency.

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*
- *Dispute settlement*
  - *Frivolous claims*
  - *Security for costs*
  - *Third party funding*
  - *Transparency*
  - *Valuation of damages*
- *Sustainable development and corporate social responsibility*
- *Definition of 'Economic Activity in the Energy Sector'*

In the course of the eleventh Negotiation Round, 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>

In relation to the “Definition of Investment”, the Modernisation Group addressed the outstanding issue of public debt. Good progress was made on the “Definition of indirect expropriation”, “Denial of benefits” and “MFN clause”. The “Definition of Fair and Equitable Treatment (FET)” will be further discussed together with the “Umbrella clause”.

Concerning the “Right to regulate”, the Modernisation Group advanced its discussions on the introduction of a self-standing article in the ECT. In addition, progress was made on General Exceptions (Article 24 ECT) and a new article addressing Security Exceptions.

The Modernisation Group substantially advanced discussions on “Security for Costs” and “Valuation of damages”. The Modernisation Group also had some discussions on “Transparency”, which will continue to be addressed in the following round.

Discussions on the topics of “Frivolous Claims” and “Third Party Funding” were tentatively concluded.

In the context of Sustainable Development and Corporate Social Responsibility, progress was made on provisions referring to relevant international instruments and agreements and on Environmental Impact Assessment. Furthermore, delegations considered the article on climate change and clean energy transition as well as a proposal for the resolution of disagreements between Contracting Parties concerning sustainable development.

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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/>.

On the “Definition of Economic Activity in the Energy Sector”, delegations continued to exchange views on the proposal of the Secretariat to implement the principle of flexibility. This principle is considered necessary by individual Contracting Parties to determine the scope of the gradual exclusion of investment protection for fossil fuels in their territories under consensus of ECT Contracting Parties. Delegations shared their general views, taking into account current international energy security crisis created by Russian aggression against Ukraine and climate goals, and discussed relevant questions since a delegation raised concerns about retroactivity and reciprocity on the proposal.

The next Round of Negotiations is scheduled to take place on 19-22 April 2022.