



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

On 16-20 May 2022, the Thirteenth Negotiation Round on the modernisation of the Energy Charter Treaty (ECT) was held in the Energy Charter Secretariat in Brussels (supplemented with videoconference).

A representative of Ukraine provided an update on the Russian military aggression against Ukraine [link]. The Secretary-General of the Energy Charter Secretariat expressed support for Ukraine and informed about further steps in that regard that are already underway.

The following remaining topics were addressed:

- *Transit*
  - *Definition of 'transit'*
  - *Access to infrastructure (including denial of access and available capacities)*
  - *Definition and principles of tariff setting*
- *Regional Economic Integration Organisation (REIO)*
- *Definition of 'Economic Activity in the Energy Sector'*
- *Sustainable development and corporate social responsibility*
- *Investment protection*
  - *Definition of 'Investment'*
  - *Definition of 'Fair and Equitable Treatment' (FET)*
  - *Denial of benefits*
  - *MFN clause*
  - *Right to regulate*
  - *Umbrella clause*
- *Dispute settlement*
  - *Security for costs*
  - *Transparency*

In the course of the Thirteenth 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>

The Modernisation Group tentatively concluded the negotiations on the topics related to Transit.

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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/>.

With respect to REIO, the Modernisation Group tentatively agreed on a clarification regarding the application of certain provisions of the ECT among members of a REIO.

On the “Definition of Economic Activity in the Energy Sector”, delegations continued their discussions including on the scope and the implementation of flexibility.

Progress was made with respect to general provisions of Sustainable Development and Corporate Social Responsibility. In this context, the Modernisation Group progressed on its discussion on a dedicated mechanism for the resolution of disputes between Contracting Parties.

On Investment Protection, the Modernisation Group achieved substantial progress on FET and Umbrella Clause. It also tentatively concluded the negotiations on the topic of Denial of Benefits. On the Definition of “Investment”, the Modernisation Group advanced on outstanding questions regarding a proposed Annex clarifying the treatment of public debt under the ECT. In the context of “Right to Regulate”, discussions focused on Exceptions.

On Dispute settlement, the Modernisation Group tentatively concluded the discussion on Security for Costs. With respect to Transparency, progress was made on the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to the investment arbitration proceedings under the ECT. In addition, transparency provisions applicable to State-to-State disputes were considered.

In sum, delegations reached a high degree of convergence in the negotiations. It was agreed to conclude outstanding aspects in dedicated online meetings on 8, 9 and 10 June 2022, in addition to the already confirmed in-person meeting on 23 June 2022, before the ad hoc meeting of the Energy Charter Conference for the agreement in principle (24 June 2022).