



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

On 19-22 April 2022, the Twelfth Negotiation Round on the modernisation of the Energy Charter Treaty (ECT) was held in the Energy Charter Secretariat in Brussels (supplemented with videoconference).

The following remaining topics were addressed:

- *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*
- *REIO*
- *Sustainable development and corporate social responsibility*
- *Dispute settlement*
  - *Security for costs*
  - *Transparency*
  - *Valuation of damages*
- *Investment protection*
  - *Right to regulate*
  - *Denial of benefits*
  - *MFN clause*
  - *Definition of indirect expropriation*
  - *Definition of ‘Investment’*
  - *Definition of ‘Fair and Equitable Treatment’*
  - *Umbrella clause*

In the course of the Twelfth 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 welcomed the participation of Ukraine and expressed its solidarity. The delegation of Ukraine took the opportunity to express its positions on the aforementioned topics and informed the Group about the [current situation in Ukraine](#).

On the “Definition of Economic Activity in the Energy Sector”, delegations continued their

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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/>.

discussion on the proposal of the Secretariat to implement the principle of flexibility.

The Modernisation Group continued its discussion on Transit on the basis of a revised draft compromise proposal.

Under REIO, Contracting Parties considered a clarification regarding the application of certain provisions of the ECT among members of a REIO being a Contracting Party to the ECT.

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

On Transparency, the Modernisation Group advanced its discussion on the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to the investor-state arbitration proceedings under the ECT.

The Modernisation Group made progress in the context of “Right to Regulate” and Denial of Benefits.

After having achieved substantive progress 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.

The Modernisation Group tentatively concluded the negotiations on the topic on Valuation of Damages and Definition of Indirect Expropriation.

On Fair and Equitable Treatment and the Umbrella Clause, the Group considered that further discussions need to be held before agreeing on the outstanding issues.

At the end of this negotiation round, the Modernisation Group considered procedural aspects regarding the entry into force of the modernised ECT and a tentative date for the ad hoc meeting of the Energy Charter Conference for the agreement in principle (24 June 2022).

The next Round of Negotiations is scheduled to take place in Brussels on 16-20 May 2022.