



PUBLIC COMMUNICATION ON THE THIRD NEGOTIATION ROUND OF THE MODERNISATION OF THE ENERGY CHARTER TREATY

On 3-6 November 2020, the Third Negotiation Round on the modernisation of the Energy Charter Treaty (ECT) was held by videoconference.¹

Taking into account the list of agreed topics for modernisation of the ECT (see Conference Decision [CCDEC 2018 18](#)) and the suggested policy options (see Conference Decision [CCDEC 2019 08](#)), during the Third Negotiation Round held by the Modernisation Group, the following topics were addressed:

- Pre-investment;
- REIO;
- Obsolete provisions;
- Remaining topics from the previous negotiation rounds.

The Modernisation Group discussed the aforementioned topics on the basis of submissions and comments provided by the delegations before and during the negotiation round. The goal of this round was to explain and clarify the positions and find common ground for the discussion without prejudice to any delegation's final decision.

The discussion on 'Pre-investment' was based on a discussion paper as well as positions expressed by delegations during the meeting, taking into account that the current Energy Charter Treaty provides that Contracting Parties shall endeavor to provide non-discriminatory treatment to investors from other Contracting Parties in the making of investments.

In connection with Regional Economic Integration Organisation (REIO), delegations considered whether it was necessary to clarify the legal relationship between members of a REIO under the ECT. Currently, one REIO – the European Union – is a member of the Energy Charter Conference. Some ECT Contracting Parties and Signatories are members of other REIOs.

Further, the delegations addressed the potential 'Obsolete provisions' included in the policy options approved by the Conference in 2019 ([CCDEC 2019 08](#)), such as Article 32 on transitional arrangements, and requested the Secretariat to provide some text proposals.

¹ On 6 November 2019 (see Conference Decision [CCDEC 2019 10](#)), the Energy Charter Conference established and mandated the Modernisation Group to start negotiations on the modernisation of the Energy Charter Treaty, with a view to conclude negotiations expeditiously. The [First Negotiation Round](#) and the [Second Negotiation Round](#) on the Modernisation of the Energy Charter Treaty took place on 6-9 July and 8-11 September 2020 respectively.

The Modernisation Group availed itself of the possibility to revert to the ‘Remaining topics from the previous negotiation rounds’ to seek clarifications on comments and proposals discussed during the first and the second round of negotiations. In particular, the Modernisation Group discussed the following topics: definition of investment, definition of investor, right to regulate, most constant protection and security, frivolous claims, third party funding, security for costs. The Group discussed the possible consolidation of proposals on, for example, the definition of investment and investor, most constant protection and security, and the right to regulate, as there appears to be common ground between the texts proposed. Some Contracting Parties expressed support for the textual proposals made by other delegations. One Contracting Party presented a proposal for a possible combined format of the texts tabled at previous rounds on the issues of frivolous claims, security for costs and third-party funding. The Group had an initial discussion on the possible future format of the negotiation texts. Different Contracting Parties welcomed this proposal as a possible basis for discussion at future rounds but indicated that they would need more time to review and assess it in detail, and pointed out that the format of future proposal should not be restricted. Some delegations who submitted text proposals signalled their willingness to discuss ahead of the next round the possibility to find a possible format on how to combine their respective text proposals on these issues.

Finally, an initial discussion took place on the reporting to the Energy Charter Conference. The mandate for negotiations on modernisation of the ECT (point n of Conference Decision [CCDEC2019 10](#)) envisages that in December 2020 “the Conference should take stock of the progress made”. This year, the Energy Charter Conference will take place on 16-17 December 2020 under the Chairmanship of Azerbaijan.

On 18 December 2020, the Modernisation Group will hold a meeting to consider and adopt the agenda for the negotiations to be held in 2021.