



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

On 1-4 June 2021, the Fifth Negotiation Round on the modernisation of the Energy Charter Treaty (ECT) was held by videoconference.

The following topics were addressed:

- Remaining topic from previous negotiation round
 - Transfers related to investments
- Transit
 - Definition of ‘transit’
 - Access to infrastructure (including denial of access and available capacities)
 - Definition and principles of tariff setting
- Sustainable development and corporate social responsibility
- Dispute settlement
 - Frivolous claims
 - Security for costs
 - Third party funding
 - Transparency
 - Valuation of damages
- Definition of Economic Activities in the Energy Sector

The Modernisation Group discussed the aforementioned topics on the basis of the progress made in the previous negotiation rounds,¹ as well as submissions and comments provided by the delegations before and during the Fifth Round of Negotiations.

Contracting Parties engaged to clarify and aligned some of their positions. In particular, they advanced the degree of consensus on transfers as well as on certain issues related to Sustainable Development (notably CSR/RBP and impact assessment).

With respect to Transit, it was decided to explore outstanding issues in a dedicated informal workshop in order to facilitate a draft compromise.

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

In relation to Dispute Settlement, Contracting Parties advanced the discussion on the prevention and the early disposal of frivolous claims in investor-state proceedings.

With respect to security for costs, third party funding and valuation of damages, common ground was identified as regards the introduction of relevant provisions.

Furthermore, Contracting Parties considered to what extent the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration should be incorporated.

Delegations exchanged positions on “Definition of Economic Activities in the Energy Sector”, including on the need to amend the relevant provisions in light of the Contracting Parties’ individual climate goals and their specific energy mixes. Support was expressed for a continuation of the discussion in the course of the sixth round of negotiations with a view to analyse compromise options.

With the view to conclude the negotiations expeditiously and to solve the divergences in their positions, the discussion of the topics of this negotiation round will be continued on the basis of compromise proposals to be drafted by the Energy Charter Secretariat. The Contracting Parties will informally meet in between the negotiating rounds to discuss the draft compromise proposals.

The Sixth Round of negotiations will take place on 6-9 July 2021 by videoconference.²

² It is expected that in 2021 the Modernisation Group will hold five rounds of negotiations ([CCDEC 2020 17](#)).