



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

On 9-12 November 2021, the Eighth Negotiation Round on the modernisation of the Energy Charter Treaty (ECT) was held by videoconference.

The following topics were addressed:

- *Investment protection*
 - *Definition of investment*
 - *Definition of investor*
 - *Clarification of ‘most constant protection and security’*
 - *Definition of Fair and Equitable Treatment (FET)*
 - *Definition of indirect expropriation*
 - *Denial of benefits*
 - *MFN clause*
 - *Right to regulate*
 - *Transfers related to investments*
 - *Umbrella clause*

- *Dispute settlement*
 - *Frivolous claims*
 - *Security for costs*
 - *Third party funding*
 - *Transparency*
 - *Valuation of damages*

- *Sustainable development and corporate social responsibility*

The Modernisation Group discussed the aforementioned topics on the basis of draft compromise proposals and submissions and comments provided by the delegations, taking into account the progress made in the previous Negotiation Rounds.¹

The Modernisation Group tentatively concluded discussions on the “Definition of investor”, “Clarification of ‘most constant protection and security’” and “Transfers related to investments”.

Good progress was achieved by the Modernisation Group with respect to the “Definition of investment”, “Definition of indirect expropriation”, “Denial of benefits”, “Right to regulate”, “MFN clause”, “Frivolous claims”, as well as “Security for costs” and “Third party funding”.

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

In particular, the Modernisation Group advanced on several aspects of “Sustainable Development and Corporate Social Responsibility” and built on previous discussions on a draft article on the relation between the Energy Charter Treaty and the Paris Agreement.

The Modernisation Group agreed to continue the discussion on the “Definition of Fair and Equitable Treatment (FET)” and on “Umbrella clause” at one of its next meetings.

The Contracting Parties reaffirmed their commitment to make further progress in coming rounds with a view to overcome remaining divergences on the abovementioned topics

Taking into account the common goal of Contracting Parties to finalise negotiations expeditiously, the Modernisation Group will hold an additional ninth negotiation round on 13 December 2021 before the annual meeting of the Energy Charter Conference, which will be held online on 14-15 December 2021. In addition, a meeting dedicated to the Modernisation Group’s work plan for 2022 is scheduled for 25 November 2021.