



GENERAL OVERVIEW OF THE ECT & UPDATE ON THE MODERNISATION PROCESS

Dr. Hava Yurttagül, Office of Legal Affairs
Energy Charter Secretariat



BACKGROUND

- European Charter Treaty (1991) – Political declaration
- Energy Charter Treaty (1994) – Legally binding
- International Energy Charter (2015) – Political declaration



PURPOSE OF THE ENERGY CHARTER TREATY

This Treaty establishes a legal framework in order to promote long-term cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter.

Article 2 ECT



"SOFT" REGIME

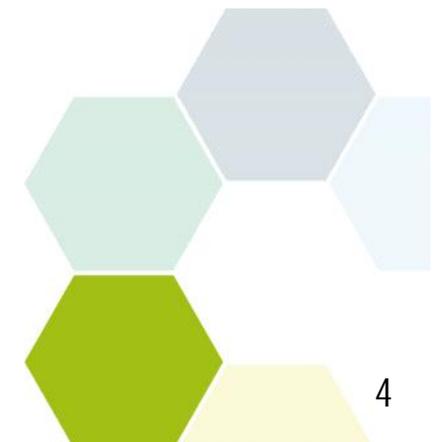
PRE-INVESTMENT PHASE

- Access to capital
- Transfer of technology
- Best-efforts in the pre-investment phase
- Energy efficiency + minimize harmful environmental impact

"HARD" REGIME

POST-INVESTMENT PHASE

- Trade provisions
- Transit provisions
- Post-investment protection
- Based on enforceable dispute settlement





GOOD OFFICES OF THE SECRETARIAT

- Conflict Resolution Centre
 - environmental disputes between Contracting Parties
 - trade disputes between Contracting Parties at least one of which is not a party to the GATT / WTO. Assist panels and provide secretarial and technical support.
 - application of the Early Warning Mechanism or the Transit Conciliation mechanism
 - good offices and mediation in relation to investment disputes or to disputes between Contracting Parties regarding the interpretation or application of the Treaty
- Model Instrument
 - Guiding tool for an effective and comprehensive management of International Investment Disputes



MODERNISATION OF THE TREATY

The conference

establishes and mandates the Modernisation Group to start negotiations on the modernisation of the Energy Charter Treaty, with a view to conclude negotiations expeditiously. The negotiations will take into account the identified list of topics (CCDEC2018 18) and suggested policy options (CCDEC2019 08) and will follow the attached procedure and timeline (including any subsequent amendment by the Modernisation Group).

CCDEC 2019 10, 6 Nov. 2019



- List of topics for **modernisation of the ECT** ([CCDEC 2018 18](#)) :

- | | |
|--|--|
| ✓ Pre-investment | ✓ Transfers related to investments |
| ✓ Definition of 'charter' | ✓ Frivolous claims |
| ✓ Definition of 'economic activity in the energy sector' | ✓ Transparency |
| ✓ Definition of investment | ✓ Security for costs |
| ✓ Definition of investor | ✓ Valuation of damages |
| ✓ Right to regulate | ✓ Third party funding |
| ✓ Definition of FET | ✓ Sustainable development and corporate social responsibility |
| ✓ MFN Clause | ✓ Definition of 'transit' |
| ✓ Clarification of 'most constant protection and security' | ✓ Access to infrastructure (including denial of access and available capacities) |
| ✓ Definition of indirect expropriation | ✓ Definition and principles of tariff setting |
| ✓ Compensation for losses | ✓ REIO |
| ✓ Umbrella clause | ✓ Obsolete provisions |
| ✓ Denial of benefits | |

- Suggested policy options for modernisation : [CCDEC2019 \(8\)](#)
- Mandate, Procedural Issues and Timeline for Negotiations : [CCDEC2019 \(10\)](#)



MODERNISATION PROCESS TIMELINE

- Start of the modernisation negotiations in 2020
- 15 rounds of negotiations in three years
- 24 June 2022: Agreement in Principle at the Ad-hoc Energy Charter Conference
- 24 November 2022: ECC invited to adopt the amendments to the ECT



AD HOC ENERGY CHARTER CONFERENCE

On 24 June 2022, the Contracting Parties to the Energy Charter Treaty (ECT) convened for the Ad Hoc Meeting of the Energy Charter Conference.

At this meeting, held under the Mongolian Chairmanship, the Energy Charter Conference confirmed the agreement in principle on the modernisation of the ECT:

[Public Communication explaining the main changes contained in the agreement in principle.](#)





USEFUL LINKS

- Public communication explaining the main changes contained in the Agreement in Principle

<https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2022/CCDEC202210.pdf>

- Information on the Modernisation Process:

<https://www.energychartertreaty.org/modernisation-of-the-treaty/>

- Statistics on Arbitration cases under the ECT:

<https://www.energychartertreaty.org/cases/statistics/>



THANK
YOU