Brussels, 3 September 2024

35TH MEETING OF THE ENERGY CHARTER CONFERENCE

3 December 2024

PROPOSED AMENDMENTS TO THE ENERGY CHARTER TREATY

The Energy Charter Conference will be invited to adopt the proposed amendments to the Energy Charter Treaty as attached hereto and communicated by the Secretariat to the Contracting Parties on 19 August 2022 with further inclusion of (i) the request of Switzerland (Message 2012/22), as supported by the Modernisation Group at its meeting on 17 January 2023 (MOD 53 Rev), and (ii) an additional amendment to Article 49, as supported by the Modernisation Group at its meeting on 26 August–2 September 2024 (MOD 55), communicated by the Secretariat to the Contracting Parties on 3 September 2024.

AMENDMENTS TO THE ENERGY CHARTER TREATY

On 3 December 2024, Contracting Parties to the Energy Charter Treaty meeting in the Energy Charter Conference adopted the following amendments to the Energy Charter Treaty. Unless expressly mentioned otherwise, the amendments refer to both the original Energy Charter Treaty as adopted in 1994 (hereinafter, "original ECT") and the Energy Charter Treaty as modified by the amendments to the trade-related provisions adopted in 1998 (hereinafter, "ECT as amended in 1998").

Article 1

The Preamble shall be amended as follows:

1. In paragraph seven, delete ", and that these commitments will be applied to the Making of Investments pursuant to a supplementary treaty".

2. After paragraph fourteen, add new paragraph, "Recalling the relevant instruments regarding sustainable development and environment to which Contracting Parties adhere, such as the Rio Declaration on Environment and Development and Agenda 21 of 1992, the International Labour Organisation (hereinafter referred to as "ILO") Declaration on Fundamental Principles and Rights at Work of 1998, the Ministerial Declaration of 2006 entitled "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development" adopted by the Economic and Social Council of the United Nations, the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the UN 2030 Agenda for Sustainable Development of 2015 with its Sustainable Development Goals, the Paris Agreement of 2015 and the United Nations Framework Convention on Climate Change (hereinafter referred to as "the UNFCCC");".

3. In paragraph fifteen, delete "United Nations Framework Convention on Climate Change, the".

4. Before the last paragraph, add two new paragraphs:

   "Acknowledging the inherent rights of Contracting Parties to regulate investments within their Areas in order to meet legitimate policy objectives;

   Recalling that measures to pursue essential security objectives may be subject to exceptions in accordance with this Treaty; and"

5. At the beginning of the last paragraph, delete "and".

Article 2

Part I shall be amended as follows:

1. In Article 1, paragraph (1), delete after "1991" and replace with ", and the International Energy Charter adopted in the Concluding Document of the Hague II Conference on the International Energy Charter signed at The Hague on 20 May 2015; signature or approval of any of the Concluding Documents is considered to be signature of the Charter.".

2. In Article 1, paragraph (2), replace "Organization" with "Organisation".

3. In Article 1, paragraph (3), replace "Organization" with "Organisation" and add afterwards "(hereinafter referred to as "REIO")"; and replace "organization" with "organisation".

4. Regarding the original ECT, in Article 1, paragraph (4), delete ", based on the Harmonised System of the Customs Co-Operation Council and the Combined Nomenclature of the European Communities,".

5. Regarding the ECT as amended in 1998, in Article 1, paragraph (4), delete ", based on the Harmonised System of the World Customs Organization and the Combined Nomenclature of the European Communities,".

6. Regarding the ECT as amended in 1998, in Article 1, paragraph (4bis), delete ", based on the Harmonised System of the World Customs Organization,".

7. In Article 1, replace the text of paragraph (5) with:

   ""Economic Activity in the Energy Sector" means an economic activity concerning:

   (a) the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those excluded by Annex NI;

   (b) the capture, utilisation and storage of carbon dioxide in order to decarbonise the energy system except as excluded by Annex NI; or

   (c) the distribution of heat to multiple premises."

8. In Article 1, paragraph (6):

   - After "an Investor", add "of a Contracting Party in the Area of another Contracting Party (hereinafter referred to as the "Host Contracting Party") that is made or acquired in accordance with the applicable law in the Host Contracting Party and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, certain duration or the assumption of risk. "Investment" refers to assets associated with an Economic Activity in the Energy Sector".

   - After the text of subparagraph (f), add:

     "For the avoidance of doubt in this paragraph:

(a) claims to money arising solely from commercial contracts for the sale of goods or services by a natural person, a company or other organisation in the Area of a Contracting Party to a natural person, a company or other organisation in the Area of another Contracting Party, or the extension of credit in relation to such transactions, are less likely to have the characteristics of an investment;

(b) an order or judgment made in a judicial or administrative action or an arbitral award do not constitute an Investment; and

(c) a minor violation of the law applicable in the Host Contracting Party at the time the investment was made or acquired does not mean that an asset is not an Investment."

- In the penultimate subparagraph, add "or reinvested" after "in which assets are invested".

- And delete the last subparagraph.

9. In Article 1, paragraph (7):

- Delete "(a) with respect to a Contracting Party:" and "(b) with respect to a "third state", a natural person, company or other organization which fulfils, mutatis mutandis, the conditions specified in subparagraph (a) for a Contracting Party.".

- Renumber subparagraph (i) as subparagraph (a) and replace the text with:

  "a natural person having the nationality of, or who is a permanent resident of, a Contracting Party in accordance with its applicable law, provided that such person does not have the nationality or is not a permanent resident of the Host Contracting Party at the time the investment was made or acquired;[1] and".

- And renumber subparagraph (ii) as subparagraph (b) and replace the text with:

  "a company or other organisation constituted in accordance with the law applicable in a Contracting Party and with substantial business activities in the Area of that Contracting Party. The existence of substantial business activities should be established by an overall examination, on a case-by-case basis, of the relevant circumstances, which may include whether the organisation:

  (i) has a physical presence in the Area of that Contracting Party;
  (ii) employs staff in the Area of that Contracting Party;
  (iii) generates turnover in the Area of that Contracting Party; or
  (iv) pays taxes in the Area of that Contracting Party.".

[1] The term "natural person" includes persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the law of the Republic of Latvia, to receive a non-citizen's passport.

10. In Article 1, paragraph (10), replace "Regional Economic Integration Organization" with "REIO" and replace twice "Organization" with "Organisation".

11. In Article 1, paragraph (12), delete "copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information." and add:

":

(a) all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C of the WTO Agreement namely:

(i) copyright and related rights;
(ii) patents (which, in the case of the European Union and of Switzerland, include rights derived from supplementary protection certificates);
(iii) trademarks;
(iv) industrial designs;
(v) layout-designs (topographies) of integrated circuits;
(vi) geographical indications;
(vii) protection of undisclosed information; and

(b) plant variety rights."

12. In Article 1, add one new paragraph:

"(15) "Labour Laws" means laws and regulations, or provisions of laws and regulations, of a Contracting Party that are required in order to implement the internationally recognised labour rights of:

(a) the freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour for children and minors;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

Article 3

Part II shall be amended as follows:

1. In Article 5, paragraph (1), replace “article III” with “Article III” and “Article 29” with “Article 32”; and in paragraph (4), add “or accession to” after “signature of”.

2. In Article 6, in paragraph (7), replace “Article 27(1)” with “Article 30(1)”.

3. In Article 7, paragraph (1), add the following text at the end:

   “For the purposes of this Treaty, “Transit” means:

   (a) the carriage through the Area of a Contracting Party, with or without storage, of Energy Materials and Products originating in the Area of another state and destined for the Area of a third state, provided that either the other state or the third state is a Contracting Party; or

   (b) the carriage through the Area of a Contracting Party, with or without storage, of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party, unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by delivering a joint written notification of their intentions to the Secretariat, which shall transmit that notification to all other Contracting Parties. The deletion shall take effect four weeks after such former notification.”

4. In Article 7, paragraph (2), add “and” at the end of subparagraph (c), and the following after subparagraph (d):

   “For the purposes of this Article, “Energy Transport Facilities” means high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.”

5. In Article 7, after paragraph (2), add three new paragraphs:

   “(3) Each Contracting Party shall endeavour to take, subject to its laws and regulations, all appropriate measures to facilitate transparent and non-discriminatory Access, for Transit purposes, to existing and future Energy Transport Facilities unless the Energy Transport Facility lacks the necessary Available Capacity or there is an incompatibility with respect to technical parameters or the quality of the Energy Materials and Products concerned. In case of denial of such access, the reasons shall be duly substantiated. For the purposes of this Article:

   (a) “Access, for Transit purposes, to Energy Transport Facilities” means, for Transit of natural gas and oil, a permission either contractual or otherwise granted to pass through such facilities in accordance with commercial contracts related to capacity for Transit, intergovernmental and host government agreements, as well

as the laws and regulations of the Contracting Party in whose Area the Energy Transport Facilities are located; and

(b) "Available Capacity" means, for Transit of natural gas and oil, physical capacity of the Energy Transport Facilities that is not allocated and could be offered to other Contracting Parties in accordance with commercial contracts related to capacity for Transit, intergovernmental and host government agreements, as well as the laws and regulations of the Contracting Party in whose Area the Energy Transport Facilities are located.

(4) Each Contracting Party shall endeavour to take, subject to its laws and regulations, all appropriate measures to facilitate that capacity allocation mechanisms and congestion management procedures for Energy Transport Facilities are market-based, transparent and non-discriminatory.

(5) Each Contracting Party shall endeavour to take, subject to its laws and regulations, all appropriate measures to facilitate that tariffs required for Access to or the use of Energy Transport Facilities for Transit purposes, as well as the methodologies used for their calculation, are applied objectively, transparently and in a non-discriminatory manner. Each Contracting Party shall endeavour to ensure, subject to its laws and regulations, the publication of the terms, conditions and tariffs or charges for Access to, or the use of, Energy Transport Facilities for Transit purposes and any other information that may be necessary to facilitate such access or use."

6. In Article 7, renumber paragraphs (3) to (7) as (6) to (10).

7. In Article 7, paragraph (5), add at the end of the first sentence "permit:"; delete "permit" at the beginning of subparagraphs (a) and (b); replace "subject to paragraphs (6) and (7)" with "subject to paragraphs (9) and (10)"; and add after the last sentence, "This shall not be construed as an obligation to renew expired contracts for the use of Energy Transport Facilities in the Area of Contracting Parties.".

8. In Article 7, paragraph (6), replace "paragraph (7)" with "paragraph (10)".

9. In Article 7, paragraph (7), replace twice "paragraph (6)" with "paragraph (9)"; replace "but only following the exhaustion" with "following an agreement in writing between the Contracting Parties parties to the dispute to submit the dispute to the conciliation procedure set out in this paragraph or after the exhaustion"; and replace "Contracting Parties party to the dispute" with "Contracting Parties parties to the dispute".

10. In Article 7, paragraph (7), add at the end of subparagraph (b) "unless otherwise agreed by the parties to the dispute"; and add at the end of subparagraph (c) "The decision regarding interim tariffs shall be made taking into account the provisions of paragraph (5).".

11. In Article 7, add two new paragraphs:

"(11) This Article shall not be interpreted to prevent Contracting Parties from organising their energy systems based on virtual flows of Energy Materials and Products. Where Contracting Parties organise their energy systems based on virtual flows, this Article does not grant a right to receive the physical Energy Materials and Products injected into such systems.

(12) This Article shall not be interpreted to prevent Contracting Parties from organising their energy systems based on international swap operations, understood as the physical or virtual exchange of a quantity of Energy Materials and Products in the Area of a Contracting Party for an equivalent quantity of the same Energy Materials and Products into the Area of another state and destined for the Area of a third state, provided that either the other state or the third state is a Contracting Party."

12. In Article 7, paragraph (9), replace "paragraph (4)" with "paragraph (7)"; and renumber paragraphs (8) to (9) as (13) to (14).

13. In Article 7, delete paragraph (10).

14. In Article 9, at the end of paragraph (1), replace "on a basis no less favourable than that which it accords in like circumstances to its own companies and nationals or companies and nationals of any other Contracting Party or any third state, whichever is the most favourable" with "on the most favourable basis which it accords in like situations to its own companies or nationals, or companies or nationals of any other Contracting Party or any non-Contracting Party".

Article 4

Part III shall be amended as follows:

1. In Article 10, replace the text of paragraph (1) with:

"Each Contracting Party shall accord to Investments of Investors of other Contracting Parties, and to such Investors with respect to their Investments, Fair and Equitable Treatment and full protection and security in its Area."

2. In Article 10, add after paragraph (1):

"(2) A Contracting Party breaches the obligation to accord Fair and Equitable Treatment set out in paragraph (1) through a measure or series of measures that constitutes:

(a) arbitrariness, such as blatant unreasonableness;

(b) targeted discrimination on wrongful grounds, such as gender, race or religious belief;

(c) fundamental breach of due process, including a fundamental breach of transparency in judicial and administrative proceedings;

(d) denial of justice in criminal, civil or administrative adjudicatory proceedings;

(e) abusive treatment such as harassment, duress or coercion; or

(f) frustration of an Investor's legitimate expectations[2] where these were central to its Investment, and arose from a clear and specific representation or commitment[3] by that Contracting Party upon which the Investor reasonably relied in deciding to make or maintain the Investment.

For greater certainty, a breach of another provision of this Treaty, or of any other international agreement, does not establish a breach of Fair and Equitable Treatment.

(3) The obligation to accord full protection and security set out in paragraph (1) refers to the physical security of Investors and their Investments."

3. In Article 10, renumber paragraph (2) as paragraph (4); add ", in like situations," after "accord" in the first line; and replace "paragraph (3)" with "paragraph (5)".

4. In Article 10, renumber paragraph (3) as paragraph (5) and replace its text with:

"For the purposes of this Article, "Treatment" means treatment accorded by a Contracting Party which is the most favourable of that which it accords to its own investors, to Investors of any other Contracting Party or to investors of any non-Contracting Party."

5. In Article 10, delete paragraphs (4) and (8).

6. In Article 10, renumber paragraphs (5) to (6) as (6) to (7); and replace all references to "paragraph (3)" with "paragraph (5)".

7. In Article 10, renumber paragraph (7) as (8); and replace its text with:

"Each Contracting Party shall accord to Investments in its Area of Investors of other Contracting Parties, and their related activities including management, maintenance, use, enjoyment or disposal, the most favourable treatment which it accords, in like situations, to Investments of its own investors or of the Investors of any other Contracting Party or investors of any non-Contracting Party and their related activities including management, maintenance, use, enjoyment or disposal.

For greater certainty, the "treatment" referred to in this paragraph does not include dispute settlement procedures provided for in other international agreements;

[2] For greater certainty, an Investor's legitimate expectations do not include general expectations, such as an expectation (in the absence of clear and specific representations or commitments to that effect) that a Contracting Party's legal or regulatory framework will not change.

[3] For the purposes of this Article, the determination of whether there is a clear and specific representation or commitment requires a case-by-case, fact-based inquiry that considers, among other factors, laws and regulations and the Contracting Party's relevant publicly known policies and their objectives.

For the purposes of this Treaty, substantive provisions in other international agreements concluded by a Contracting Party with a non-Contracting Party do not in themselves constitute the "treatment" referred to in this paragraph. Measures of a Contracting Party pursuant to those provisions[4] may constitute such treatment and thus give rise to a breach of this paragraph."

8. In Article 10, paragraph (9), delete the last sentence; replace "Regional Economic Integration Organization" with "REIO"; replace "In respect of subparagraph (a) the report" with "The report"; replace "other measures relevant to: (a) exceptions to paragraph (2); or (b) the programmes referred to in paragraph (8)" with "other measures relevant to exceptions to paragraph (4)"; and replace "paragraph (3)" with "paragraph (5)".

9. In Article 10, paragraph (10), replace "paragraphs (3) and (7)" with "paragraphs (5) and (8)".

10. In Article 10, after paragraph (12), add:

"(13) For the purposes of this Treaty, where a Contracting Party has entered into any specific written commitment with an Investor of another Contracting Party or with the Investor's Investment in its Area, the former Contracting Party shall not breach the said commitment through the exercise of governmental authority."

11. In Article 12, paragraph (1), replace "accords to any other Investor, whether its own Investor, the Investor of any other Contracting Party, or the Investor of any third state" with "accords to any other investors, whether its own investors, the Investors of any other Contracting Party, or the investors of any non-Contracting Party".

12. In Article 12, paragraph (2), add a colon after "resulting from".

13. In Article 13, paragraph (1), replace "shall not be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization or expropriation" with "shall not be the subject of direct or indirect expropriation"; after "time immediately before" add "the Expropriation took place or"; and after "value of the Investment" add ", whichever is the earlier".

14. In Article 13, renumber paragraphs (2) and (3) as (5) and (6); and after paragraph (1), add:

"(2) Direct expropriation occurs when an Investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

(3) Indirect expropriation occurs when a measure or series of measures of a Contracting Party has an effect equivalent to direct expropriation, without formal transfer of title or outright seizure, in that it substantially deprives the Investor of the value of its

[4] For greater certainty, the mere transposition of those provisions into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as a measure.

Investment or of the fundamental attributes of property in its Investment, including the right to use, enjoy or dispose of its Investment.

The determination of whether a measure or series of measures of a Contracting Party constitutes indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Contracting Party has an adverse effect on the economic value of an Investment does not establish that an indirect expropriation has occurred; and

(b) the character of the measure or series of measures, including its objective and context.

(4) Except in rare circumstances when the impact of a measure or series of measures is so severe in light of its purpose that it is manifestly excessive, non-discriminatory measures by a Contracting Party that are designed and applied to protect legitimate policy objectives, such as public health, safety and the environment (including with respect to climate change mitigation and adaptation), do not constitute indirect expropriations."

15. In Article 14, delete paragraph (5); and replace the text of paragraph (4) with:

"Notwithstanding paragraphs (1) to (3), a Contracting Party may prevent, limit or delay a transfer, as far as doing so does not constitute a disguised restriction on transfers, through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading or dealing in futures, options, securities or other financial instruments;

(c) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgements in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes."

16. In Article 14, renumber paragraph (6) as paragraph (5); and replace the reference to "under Article 29(2)(a)" with "under Article 32(2)(a)".

17. In Article 14, add two new paragraphs at the end:

"(6) Notwithstanding paragraphs (1) to (3), where a Contracting Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures.[5] Such measures shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(b) not exceed what is necessary to deal with the circumstances described in this paragraph;

(c) be temporary and be phased out progressively, as the situation specified in this paragraph improves;

(d) avoid unnecessary damage to the commercial, economic and financial interests of any other Contracting Parties;

(e) be non-discriminatory when compared to any other Contracting Party or non-Contracting Party in like situations; and

(f) be promptly notified to the other Contracting Parties through the Secretariat.

For greater certainty, serious balance-of-payments or external financial difficulties, or threat thereof, may be caused by, among other factors, serious difficulties related to monetary or exchange rate policies, or threat thereof.

(7) Notwithstanding paragraphs (1) to (3), in exceptional circumstances of serious difficulties, or threat thereof, for the operation of the economic and monetary union in the case of the European Union or for the operation of monetary and exchange rate policy in the case of other Contracting Parties, safeguard measures may be adopted or maintained for a period not exceeding six months. Such measures shall be limited to what is strictly necessary to deal with the circumstances described in this paragraph."

18. In Article 15, paragraph (1), replace "Area of another Contracting Party (hereinafter referred to as the "Host Party"), the Host Party shall" with "Area of the Host Contracting Party, the Host Contracting Party shall".

19. In Article 16, replace the title with "Right to Regulate" and the text of the Article with:

[5] In the case of the European Union, such measures may be taken by a Member State of the European Union in situations other than those referred to in Article 14(6), which affect the economy of that Member State.

"The Contracting Parties reaffirm the right to regulate within their Areas to achieve legitimate policy objectives, such as the protection of the environment, including climate change mitigation and adaptation, protection of public health, safety or public morals."

20. After Article 16, add a new Article:

"ARTICLE 16 BIS
NON-APPLICATION OF PART III TO CERTAIN INVESTMENTS

This Part does not apply to Contracting Parties listed in Annex NPT in respect of an Investment in their Area of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Annex NI."

21. In Article 17, add "and Article 26" after "Part III" in the title; and replace the text of the Article with:

"(1) A Contracting Party (hereinafter referred to as the "denying Contracting Party") may, no later than the date a tribunal or court determines for the submission of arguments on preliminary questions, deny the application of this Part and of Article 26 to an Investor of another Contracting Party or to an Investment of an Investor of another Contracting Party, if the denying Contracting Party establishes that such Investor or Investment is owned or controlled by a natural or legal person of a non-Contracting Party with which, or as to which, the denying Contracting Party:

(a) does not maintain diplomatic relations; or

(b) adopts or maintains measures for the maintenance of international peace and security, including the protection of human rights, in line with the UN Charter and its international commitments, that:

(i) prohibit transactions with respect to that Investor or Investment; or

(ii) would be violated or circumvented if the benefits of this Part and Article 26 were accorded to that Investor or Investment, including where the measures prohibit transactions with a natural or legal person who owns or controls such Investor or Investment.

(2) A Contracting Party may deny such benefits pursuant to this Article without any prior publicity or other additional formality related to its intention to exercise the right conferred by this Article."

22. After Article 17, add a new Article:

"ARTICLE 17 BIS
SUBSIDIES

For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced by a Contracting Party, or has been ordered to

be reimbursed by a competent court, administrative tribunal or other competent authority of that Contracting Party, shall not constitute a breach of the provisions of this Part, even if there is loss or damage to the Investment as a result."

Article 5

Part IV shall be amended as follows:

1. In Article 19, replace the title with "Sustainable Development"; and add the following four paragraphs at the beginning of the Article:

"(1) The Contracting Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. The Contracting Parties reaffirm their commitment to promote the development of international trade and investment in energy-related sectors in such a way as to contribute to the objective of sustainable development.

(2) Each Contracting Party reaffirms its rights and obligations under the multilateral environmental and labour agreements to which it is a party,[6] such as the UNFCCC, the Paris Agreement and the fundamental ILO conventions, and reaffirms its commitments[7] with regard to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.[8] Recognising the right of each Contracting Party to determine its sustainable development policies and priorities, to establish its own levels of domestic environmental and labour protection and to adopt or modify accordingly its relevant laws and regulations consistently with its commitments to the internationally recognised agreements to which it is a party, each Contracting Party shall strive to ensure that its relevant laws and regulations provide for and encourage high levels of labour and environmental protection, including with respect to climate change mitigation and adaptation.

(3) Contracting Parties shall not encourage trade or investment in energy-related sectors by relaxing or lowering the levels of protection afforded in their respective environmental or Labour Laws. To that effect, a Contracting Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws or, through a sustained or recurring course of action or inaction, fail to effectively enforce such laws in order to encourage trade or investment in energy-related sectors between the Contracting Parties.

[6] For greater certainty, the reaffirmation of the rights and obligations under multilateral environmental and labour agreements applies as they relate to energy-related sectors.
[7] For greater certainty, the reaffirmation of the commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up applies as it relates to energy-related sectors.
[8] ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at Geneva on 18 June 1998 by the International Labour Conference at its 86th Session.

(4) Contracting Parties shall not implement their respective environmental and Labour Laws in a manner that would constitute a disguised restriction on trade or investment in energy-related sectors between Contracting Parties or an unjustifiable or arbitrary discrimination against other Contracting Parties."

2. In Article 19, renumber paragraph (1) as (5); add "strive to" after "In doing so each Contracting Party shall"; replace "Contracting Parties shall accordingly:" with "Each Contracting Party shall accordingly:"; replace "their" with "its" in subparagraph (a); and replace the text of subparagraph (i) with:

"require that an impact assessment is carried out, to the extent consistent with its laws and regulations, prior to granting authorisations for energy investment projects.

The impact assessment shall identify and assess, to the extent consistent with the laws and regulations of the Contracting Party, the significant effects of the project on matters which may include:

(i) population and human health;

(ii) biodiversity;

(iii) land, soil, water, air and climate; and

(iv) cultural heritage and landscape, including the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.

Each Contracting Party shall ensure that an early and effective opportunity and an appropriate time period is given to the public concerned, including relevant non-governmental organisations, to participate in the environmental impact assessment and to provide comments on it. Each Contracting Party shall ensure that the findings of the environmental impact assessment are taken into account and that the results of the public consultation are made available to the public prior to granting an authorisation for the project. The findings of the environmental impact assessment and of the authorisation granted shall be made available to the public in an appropriate manner.".

And, at the end of subparagraph (j), add "and".

3. In Article 19, delete paragraph (2); and add a new paragraph:

"(6) The Contracting Parties recognise the importance of responsible business conduct in contributing to the UN Sustainable Development Goals. Each Contracting Party shall encourage Investors operating within its Area or subject to its jurisdiction, to adopt and implement voluntarily into their policies and practices, principles of responsible business conduct consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Contracting Party, such as the United

Nations Guiding Principles on Business and Human Rights, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the ILO, and the OECD Guidelines for Multinational Enterprises."

4. In Article 19, renumber paragraph (3) as (7); and add a new paragraph after it:

"(8) To the extent consistent with its laws and regulations, each Contracting Party shall ensure that it:

(a) develops, enacts and implements any measures aimed at protecting the environment or labour conditions that may affect trade or investment in energy-related sectors, or trade or investment measures that may affect the protection of the environment or labour conditions in energy-related sectors, in a transparent manner; and

(b) raises awareness and provides reasonable opportunities for interested persons and stakeholders to submit views on such measures as appropriate."

5. After Article 19, add a new Article:

"ARTICLE 19 BIS
CLIMATE CHANGE AND CLEAN ENERGY TRANSITION

Recognising the urgent need of pursuing the ultimate objective of the UNFCCC and the purpose and goals of the Paris Agreement in order to effectively combat climate change and its adverse impacts, and being committed to enhancing the contribution of trade and investment in energy-related sectors to climate change mitigation and adaptation, each Contracting Party reaffirms its commitments to:

(a) effectively implement its commitments and obligations under the UNFCCC and the Paris Agreement;

(b) promote and enhance the mutual supportiveness of investment and climate policies and measures, thereby accelerating the transition towards a low emission, clean energy and resource efficient economy, as well as to climate-resilient development;

(c) promote and facilitate trade and investment of relevance for climate change mitigation and adaptation, including, inter alia, by removing obstacles to trade and investment concerning low carbon energy technologies and services such as renewable energy production capacity, and by adopting policy frameworks conducive to this objective; and

(d) cooperate with the other Contracting Parties on investment-related aspects of climate policies and measures bilaterally and in international fora, as appropriate."

6. In Article 20, paragraph (1), replace "Article 29(2)(a)" with "Article 32(2)(a)"; and in paragraph (3), replace "above mentioned" with "above-mentioned".

7. In Article 21, paragraph (2), replace two references to "Article 7(3)" with "Article 7(6)"; in paragraph (3), replace "Article 10(2) and (7)" with "Article 10(4) and (8)" as well as "Regional Economic Integration Organization" with "REIO"; in paragraph (4) replace "Article 29(2)" with "Article 32(2)"; in paragraph (5) replace two references to "Article 26(2)(c) or 27(2)" with "Article 26(2)(c) or 30(2)"; replace "Articles 26 and 27" with "Articles 26 and 30"; and in subparagraph (b) replace all references to "expropriation" with "Expropriation".

8. In Article 22, paragraph (5), replace "organization" with "organisation".

9. In Article 24, replace the title "Exceptions" with "General Exceptions"; and delete paragraph (1).

10. In Article 24, renumber paragraph (2) as (1); and replace its text with:

"The provisions of this Treaty other than Articles 12, 13 and 32 shall not preclude any Contracting Party from adopting or enforcing any measure:

(a) necessary to protect public morals or to maintain public order;[9]

(b) necessary to protect human, animal or plant life or health;[10]

(c) necessary to ensure the safety and integrity of critical energy facilities and infrastructure;

(d) necessary to secure compliance with laws which are not inconsistent with the provisions of this Treaty including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contractual obligations; or

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(e) essential to the acquisition or distribution of Energy Materials and Products in conditions of short supply arising from causes outside the control of that Contracting Party, provided that any such measure shall be consistent with the principles that:

(i) all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products; and

[9] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
[10] Subparagraph (1)(b) includes environmental measures (including climate change mitigation and adaptation measures) necessary to protect human, animal or plant life or health.

(ii) any such measure that is inconsistent with this Treaty shall be discontinued as soon as the conditions giving rise to it have ceased to exist;

(f) designed to benefit Investors who are aboriginal people or socially or economically disadvantaged individuals or groups or their Investments and notified to the Secretariat as such, provided that such measure:

(i) has no significant impact on that Contracting Party's economy; and

(ii) does not discriminate between Investors of any other Contracting Party and Investors of that Contracting Party not included among those for whom the measure is intended. Such measures shall be duly motivated and shall not nullify or impair any benefit one or more other Contracting Parties may reasonably expect under this Treaty to an extent greater than is strictly necessary to the stated end; or

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;[11]

provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Contracting Parties where like conditions prevail, or a disguised restriction on commerce or investment promotion or protection covered by this Treaty."

11. In Article 24, renumber paragraph (4) as (2); and replace its text with: "The provisions of this Treaty which accord most favoured nation treatment shall not oblige any Contracting Party to extend to the Investors of any other Contracting Party any preferential treatment resulting from its membership of a free-trade area or customs union."

12. In Article 24, delete paragraph (3); and add a new paragraph at the end:

"(3) For greater certainty, Articles 7, 26, 30, 30 bis and 32 shall not apply among Contracting Parties that are members of the same REIO in their mutual relations.

A REIO shall provide information on the legal framework related to the movement of its Energy Materials and Products within its Area, as well as on trade provisions and provisions for the resolution of investment disputes at least once a year to other Contracting Parties at their request and to the Secretariat for information to other Contracting Parties."

13. After Article 24, add a new Article:

"ARTICLE 24 BIS
SECURITY EXCEPTIONS

[11] Subparagraph (1)(g) includes measures adopted for the conservation of living and non-living exhaustible natural resources.

(1) Nothing in this Treaty shall be construed to prevent any Contracting Party from taking any measure for the maintenance of international peace and security, or to require a Contracting Party to furnish any information, the disclosure of which it considers contrary to its essential security interests.

(2) Without prejudice to paragraph 1 of this Article, the provisions of this Treaty other than Articles 12, 13 and 32 shall not be construed to prevent a Contracting Party from taking any measure which it considers necessary:

(a) for the protection of its essential security interests including those:

(i) relating to the supply of Energy Materials and Products and energy-related services for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iii) taken in time of war, armed conflict or other emergency in international relations; or

(b) relating to the implementation of national policies respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or needed to fulfil its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines, and other international nuclear non-proliferation obligations or understandings.

(3) Such measures shall not constitute a disguised restriction on Transit."

14. In Article 25, paragraph (3), replace "Article 29" with "Article 32".

Article 6

Part V shall be amended as follows:

1. In Article 26, paragraph (3), subparagraph (a), replace "subparagraphs (b) and (c)," with "subparagraphs (b), (c) and (d),".

2. In Article 26, paragraph (3), subparagraph (c), replace "under the last sentence of Article 10(1)" with "under Article 10(13)".

3. In Article 26, paragraph (3), after subparagraph (c), add a new subparagraph:

"(d) A Contracting Party listed in Annex IA-NI does not give such unconditional consent with respect to a dispute arising in relation to an Investment in its Area of an Investor of another Contracting Party regarding Energy Materials and Products or activities excluded by the latter Contracting Party in Annex NI."

4. In Article 26, paragraph (4), after "submitted" add ", in accordance with the provisions set forth in this Treaty,".

5. In Article 26, paragraph (6), replace "international law" with "international law.[12]"; and add afterwards as a new unnumbered subparagraph:

   "The tribunal shall apply the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration of 1 April 2014 (hereinafter referred to as "UNCITRAL Transparency Rules") in accordance with the following subparagraphs:

   (a) Nothing in this paragraph requires a Contracting Party to make available to the public or otherwise disclose during or after the proceedings, including the hearing, confidential or protected information within the meaning of Article 7(2) of the UNCITRAL Transparency Rules, or information the disclosure of which is restricted under its domestic law, or information the disclosure of which it considers to be contrary to its essential security interests; and

   (b) Without prejudice to Article 3 of the UNCITRAL Transparency Rules, a party to the dispute may also make available to the public a request for amicable settlement, an agreement to mediate, a notice of challenge or a decision on challenge of a member of the tribunal, as well as a request for consolidation, subject to Article 7 of the UNCITRAL Transparency Rules and after redaction of confidential or protected information done in consultation with the other party to the dispute."

6. In Article 26, after paragraph (8), add:

"(9) An arbitral tribunal may award:

   (a) monetary damages and any applicable interest; and

   (b) restitution of property, in which case the award shall provide that the Contracting Party party to the dispute may pay monetary damages determined in accordance with Article 13(1) and any applicable interest in lieu of restitution.

(10) Monetary damages shall not be greater than the loss suffered by the Investor, as a result of the breach of the provisions referred to in Part III, reduced by any prior damages or compensation already provided by the Contracting Party concerned. The tribunal shall not award punitive damages.

(11) The tribunal shall order that the costs of the proceedings and other reasonable costs be borne by the unsuccessful party to the dispute, unless the tribunal determines that such

[12] For greater certainty, the domestic law of a Contracting Party shall not be part of the applicable law. Where a tribunal is required to ascertain the meaning of a provision of the domestic law of a Contracting Party as a matter of fact, it shall follow the prevailing interpretation of that provision given by the courts or authorities of that Contracting Party, where such interpretation exists in accordance with the legal procedures of that Contracting Party, and any meaning given to the relevant domestic law of a Contracting Party by the tribunal shall not be binding upon the courts or authorities of that Contracting Party. A tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of the obligations under Part III, under the domestic law of a Contracting Party.

apportionment is unreasonable in the circumstances of the case. Where only some parts of the claims have been successful, the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

(12) A claim with respect to the restructuring of debt issued by a Contracting Party may only be submitted under Article 26(4) in accordance with Annex PD.

(13) A copy of the award shall be deposited with the Secretariat which shall publish it."

7. After Article 26, add three new Articles:

"ARTICLE 27
FRIVOLOUS CLAIMS

(1) (a) A Contracting Party party to the dispute may, no later than 45 days after the constitution of a tribunal established under Article 26(4) or before the first meeting, whichever is the earlier, file an objection that the claim or any part thereof, is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction or the competence of the tribunal. A Contracting Party party to the dispute may also file such an objection no later than 30 days after it became aware of facts on which the objection is based where, owing to exceptional circumstances, it was not aware of those facts earlier.

(b) The party shall specify as precisely as possible the basis for the objection. The tribunal, after giving the parties to the dispute an opportunity to present their observations on the objection, shall, at its first meeting or promptly thereafter, issue a decision or award on the objection, stating the grounds therefor. If the objection is received later than 45 days after the constitution of the tribunal, the tribunal shall issue such decision or award as soon as possible, and no later than 120 days after the objection was filed. The tribunal shall assume the facts alleged by the Investor party to the dispute to be true and may also consider any relevant facts not in dispute.

(c) On receipt of an objection under this paragraph, and unless it considers the objection manifestly unfounded, the tribunal shall suspend any proceedings on the merits and fix any time limit necessary for considering the objection and the further conduct of the proceedings. If the tribunal decides that all parts of the claim are manifestly without legal merit, it shall render an award to that effect. Otherwise, the tribunal shall issue a decision on the objection. Such a decision shall be without prejudice to the right of a Contracting Party party to the dispute to object, in the course of the proceeding, to the legal merits of a claim and without prejudice to the tribunal's authority to address other objections as a preliminary question.

(2) (a) Without prejudice to the authority of a tribunal established under Article 26(4) to address other objections as a preliminary question or to the right of the Contracting Party party to the dispute to raise any such objections at any appropriate time, the tribunal shall address and decide as a preliminary question any objection by the

Contracting Party party to the dispute that, as a matter of law, the claim or any part thereof, is not a claim in respect of which an award in favour of the Investor may be made, even if the facts alleged by the Investor were assumed to be true. The tribunal may also consider any relevant facts not in dispute.

(b) Such an objection shall be filed as soon as possible and no later than the date fixed for the filing of the reply to the claim of the Contracting Party party to the dispute. A Contracting Party party to the dispute may also file such an objection no later than 30 days after it became aware of facts on which the objection is based where, owing to exceptional circumstances, it was not aware of those facts earlier.

(c) On receipt of an objection under this paragraph, and unless it considers the objection manifestly unfounded, the tribunal shall suspend any proceedings on the merits, and shall set a timetable for considering the objection consistent with any timetable it has set for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

(3) An objection shall not be filed under paragraph (1) if the Contracting Party party to the dispute has filed an objection under paragraph (2). If an objection has been filed pursuant to paragraph (1), the tribunal may, taking into account the circumstances of that objection, decline to address an objection filed under paragraph (2).

(4) For greater certainty, the tribunal shall issue an award declining jurisdiction if the dispute arose, or was foreseeable on the basis of a high degree of probability, at the time when the Investor party to the dispute acquired ownership or control of the Investment subject to the dispute, and the tribunal determines, on the basis of the facts of the case, that the acquisition of such ownership or control of the Investment was for the main purpose of submitting a claim under Article 26(4). The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the tribunal.

ARTICLE 28
SECURITY FOR COSTS

(1) At the request of the Contracting Party party to the dispute, and following consultation in writing with the parties to the dispute, a tribunal established under Article 26(4) may order an Investor party to the dispute to post security for all or part of the costs of the proceedings.

The following procedure shall apply:

(a) the request shall specify the circumstances that require security for costs;

(b) the tribunal shall fix time limits for submissions on the request;

(c) the tribunal shall issue its decision on the request within 30 days after the later of the constitution of the tribunal or the last submission on the request.

(2) In determining whether to order the Investor party to the dispute to provide security for costs, the tribunal shall consider all relevant circumstances, including:

(a) whether the Investor party to the dispute risks not being able or willing to honour a possible decision on costs issued against it;

(b) the effect that providing security for costs may have on the ability of the Investor party to the dispute to pursue its claim; and

(c) the conduct of the parties to the dispute.

(3) If the security for costs is not posted in full within 30 days after the issuance of an order pursuant to paragraph (1) or within any other time period set by the tribunal, the tribunal shall so inform the parties to the dispute. The tribunal, after consulting with the parties to the dispute, may order the suspension or termination of the proceedings.

(4) The Investor party to the dispute shall promptly disclose any material change in the circumstances upon which the tribunal ordered security for costs. The tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request, after hearing the parties to the dispute.

ARTICLE 29
THIRD-PARTY FUNDING

(1) Each party to the dispute shall disclose in writing to the other party to the dispute and to a tribunal established under Article 26(4) the name and address, the ultimate beneficial owner and corporate structure as applicable, of any natural or legal person that provides the Third-Party Funding. "Third-Party Funding" means any funding provided by a natural or legal person that is not a party to the dispute, to finance, directly or indirectly, the pursuit or defence of the arbitral proceedings under Article 26(4) through a donation or grant or through an agreement (hereinafter referred to as a "funding agreement") in return for remuneration dependent upon the outcome of the dispute.

(2) Such disclosure shall be made at the time of the submission of the dispute for resolution under Article 26(4) or without delay as soon as the funding agreement is concluded or the donation or grant is made after the submission of the dispute for resolution under Article 26(4). Any changes in the information disclosed shall be immediately notified to the other party to the dispute and the tribunal.

(3) The information disclosed may be considered, in addition to any other relevant information, for assessing an arbitrator's impartiality and independence.

(4) The tribunal may order disclosure of further information regarding the funding agreement and the third-party providing the funding, if it deems it necessary at any stage of the proceeding."

8. Renumber Article 27 as 30, and add at the end of the title "(Ex Article 27)".

9. In Article 27, paragraph (2), replace "interpretation of Article 6 or Article 19 or, for Contracting Parties listed in Annex IA, the last sentence of Article 10(1)," with "interpretation of Article 6, Article 19, or Article 19 bis or, for Contracting Parties listed in Annex IA, Article 10(13),"; and after paragraph (3), add:

"(4) The Contracting Parties parties to the dispute shall make the following documents or information publicly available no later than 20 days after their issuance or, at the request of a Contracting Party party to the dispute, in accordance with the timetable determined by the tribunal, unless they decide, in order to protect confidential information, to publish these documents only in parts:

(a) the written notice submitting the matter to an ad hoc tribunal pursuant to paragraph (2);

(b) the date of establishment of the tribunal in accordance with paragraph (3), the time limit for *amicus curiae* submissions determined by the tribunal pursuant to paragraph (5), and the working language for the tribunal proceedings;

A Contracting Party party to the dispute may make publicly available its written submissions and oral statements in the tribunal proceedings, subject to the protection of confidential information.

Any hearing of the tribunal shall be open to the public unless the Contracting Parties parties to the dispute agree otherwise. The tribunal shall meet in closed session if the submission or arguments of a Contracting Party party to the dispute contain information designated by that Contracting Party as confidential. Natural persons of a Contracting Party or legal persons established in the Area of a Contracting Party may make *amicus curiae* submissions to the tribunal in accordance with paragraph (5).

Nothing in this paragraph requires a Contracting Party to make available to the public or otherwise disclose during or after the tribunal proceedings, including the hearing, confidential information the disclosure of which is restricted under its domestic law, or which would prejudice legitimate commercial interests of particular enterprises, public or private, or information the disclosure of which it considers to be contrary to its essential security interests.

(5) Unless the Contracting Parties parties to the dispute agree otherwise within ten days after the date of establishment of the tribunal, the tribunal may receive unsolicited written submissions from natural persons of a Contracting Party or legal persons established in

the Area of a Contracting Party who are independent from the governments of the parties to the dispute, provided that the submissions:

(a) are received by the tribunal by a date determined by the tribunal;

(b) are concise, typed at double space and no longer than 15 pages, including any annexes;

(c) are directly relevant to a factual or a legal issue under consideration by the tribunal;

(d) contain a description of the person making the submission, including, if applicable, the nationality or place of establishment of the person, the nature of its activities, its legal status, its general objectives, the source of its financing and any controlling entity;

(e) specify the nature of the interest that the person has in the proceedings;

(f) are drafted in the working language of the tribunal; and

(g) contain a statement disclosing whether the person has any relationship, direct or indirect, with any Contracting Party party to the dispute or any third-party party to the dispute, as well as whether it has, or will, receive any assistance, financial or otherwise, from a Contracting Party party to the dispute or a third-party party to the dispute in the preparation of the *amicus curiae* submissions.

The *amicus curiae* submissions shall be provided to the Contracting Parties parties to the dispute for comments. The Contracting Parties parties to the dispute may submit comments. The tribunal shall list in its award all the *amicus curiae* submissions it has received pursuant to paragraph (5). The tribunal shall not be obliged to address in its award the arguments made in those submissions. If the tribunal addresses arguments made therein, it shall also take into account any relevant comments made by the Contracting Parties parties to the dispute."

10. Add a new Article:

"ARTICLE 30 BIS
RESOLUTION OF DISPUTES ON SUSTAINABLE DEVELOPMENT PROVISIONS BETWEEN CONTRACTING PARTIES

(1) In the event of a dispute between Contracting Parties on any matter regarding the interpretation or application of Articles 19 and 19 bis, the Contracting Parties shall endeavour to resolve the dispute amicably through diplomatic channels.

(2) If the dispute has not been resolved in accordance with paragraph (1) within six months, either Contracting Party party to the dispute shall endeavour to make recourse to arrangements for the consideration of such dispute in other appropriate international fora. If those arrangements to give consideration to the dispute, other than diplomatic channels, have not been initiated within twelve months, either Contracting Party party to

the dispute may refer the matter to the Secretary-General by a notification summarising it.

(3) Within 30 days of receipt of such a notification, the Secretary-General, in consultation with the Contracting Parties parties to the dispute, shall appoint a conciliator. Such a conciliator shall have substantial relevant expertise in the matters subject to the dispute and shall not be a national or citizen of, or permanently resident in, one of the Contracting Parties parties to the dispute. The Charter Conference shall adopt standard provisions concerning the conduct of conciliation and the compensation of conciliators.

(4) The conciliator shall seek information and advice from the ILO or relevant bodies or organisations established under multilateral environmental agreements. The conciliator, upon the agreement of the Contracting Parties parties to the dispute, may also seek additional information from any source he or she deems appropriate. The conciliator shall forward any such information or advice to the Contracting Parties parties to the dispute, allowing them to submit their comments within 60 days of its receipt.

(5) The conciliator shall seek an agreement between the Contracting Parties parties to the dispute. If the Contracting Parties parties to the dispute cannot reach an agreement, the conciliator shall suggest a potential compromise or a process to achieve it that the Contracting Parties parties to the dispute have to consider in good faith.

(6) If the Contracting Parties parties to the dispute cannot agree with the compromise referred to in paragraph (5), the conciliator shall issue a non-legally binding report to the subsidiary body of the Charter Conference determined by the provisions referred to in paragraph (3) no later than 180 days after the date of his or her appointment. The non-legally binding report shall set out the relevant facts, the applicability of the relevant provisions and the basic rationale for any findings and recommendations.

(7) The subsidiary body of the Charter Conference determined by the provisions referred to in paragraph (3) shall discuss actions and measures to be implemented by the Contracting Parties parties to the dispute, taking into account the conciliator's report and the findings and recommendations therein. Each Contracting Party party to the dispute shall inform the Secretariat of its implementation of actions or measures no later than three months after the date of issuance of the report. The report shall be made public. The Contracting Parties parties to the dispute shall ensure the protection of confidential information. The subsidiary body of the Charter Conference shall monitor the implementation of any such actions or measures and shall keep the matter under review and report to the Charter Conference for a period determined by the standard provisions referred to in paragraph (3)."

11. Renumber Article 28 as 31; replace the title with "Non-Application of Article 30 to Certain Disputes (Ex Article 28)"; and replace "29" with "32", and "27" with "30".

Article 7

Part VI shall be amended as follows:

1. Renumber Article 29 as 32; add at the end of the title "(Ex Article 29)"; and delete subparagraph (2)(b).

2. Regarding the original ECT, in Article 29, in subparagraph (2)(a), replace "subparagraphs (b) and (c)" with "subparagraph (b)"; and renumber subparagraph (c) as subparagraph (b).

3. Regarding the original ECT, in Article 29, in paragraph (3), replace "Regional Economic Integration Organization" with "REIO".

4. Regarding the ECT as amended in 1998, in Article 29, in paragraph (3), replace all "Regional Economic Integration Organization" with "REIO".

5. Regarding the original ECT, in Article 29, paragraph (7), replace the text after "an agreement" with "that establishes a free-trade area or a customs union as described in article XXIV of the GATT.".

6. Regarding the ECT as amended in 1998, in Article 29, after subparagraph (9)(c), replace the text after "an agreement" with "that establishes a free-trade area or a customs union as described in article XXIV of the GATT 1994.".

7. Delete Articles 30 to 32.

Article 8

Part VII shall be amended as follows:

1. In Article 33, paragraph (3), replace "Regional Economic Integration Organization" with "REIO".

2. In Article 34, paragraph (3), replace the text of subparagraph (g) with "encourage cooperative efforts aimed at facilitating and promoting market-oriented reforms and modernisation of energy sectors in those Contracting Parties undergoing economic transition;".

3. In Article 34, paragraph (4), replace "organizations" with "organisations".

4. Regarding the original ECT, in Article 34, after paragraph (7), add a new paragraph:

   "(8) Five years after the entry into force of the amendments to this Treaty approved 3 December 2024 and thereafter at intervals of five years, or on such a date as may be determined by the Charter Conference, the Charter Conference shall review the content of Annexes EM and NI. In the course of that review, it may decide to modify one or both Annexes."

5. Regarding the ECT as amended in 1998, in Article 34, after paragraph (7), add a new paragraph:

"(8) Five years after the entry into force of the amendments to this Treaty approved 3 December 2024 and thereafter at intervals of five years, or on such a date as may be determined by the Charter Conference, the Charter Conference shall review the content of Annexes EM I and NI. In the course of that review, it may decide to modify one or both Annexes."

6. In Article 36, subparagraph (1)(a), delete "and Annex T".

7. In Article 36, subparagraph (1)(b), replace "Regional Economic Integration Organizations" with "REIOs"; and in paragraph (7), replace "Regional Economic Integration Organization" with "REIO" and "Organization" with "Organisation".

8. Regarding the ECT as amended in 1998, in Article 36, subparagraph (1)(d), replace "Annexes EM," with "Annexes EM I, EM II,".

Article 9

Part VIII shall be amended as follows:

1. In Article 38, replace "Regional Economic Integration Organizations" with "REIOs".

2. In Article 40, paragraph (1), replace "Regional Economic Integration Organization" with "REIO".

3. In Article 41, replace "Regional Economic Integration Organizations" with "REIOs".

4. In Article 43, in paragraph (1), replace "Regional Economic Integration Organizations" with "REIOs", and "organizations" with "organisations"; and in paragraph (2), replace "Regional Economic Integration Organization" with "REIO", and "organization" with "organisation".

5. In Article 44, replace all "Regional Economic Integration Organization" with "REIO" and "Organization" with "Organisation".

6. In Article 45, delete subparagraph (3)(c) and paragraphs (4), (5) and (7); renumber paragraph (6) as (4) and delete "provisional" before "Secretariat"; and in subparagraph (3)(b), delete ", except as otherwise provided in subparagraph (c)".

7. In Article 48, number the existing text as paragraph (1); and add a second paragraph:

"(2) Modifications and changes to Annexes shall enter into force one year after the date of their approval by the Conference unless otherwise specified in the modified or changed Annex or by the Charter Conference. Modifications and changes to Annexes shall not apply to an ongoing dispute submitted under Article 26 before the date of the entry into force of such modification or change. Unless otherwise specified in the modified or changed Annex or by the Charter Conference, modifications and changes

to Annexes shall only apply to Investments made after the date of the entry into force of such modification or change."

8. In Article 49, replace "The Government of the Portuguese Republic" with "The Secretariat".

9. In Article 50, delete "Italian,".

Article 10

Delete Annexes TFU, PA and T; and add in the Annexes to the original ECT as 12 to 14 and to the ECT as amended in 1998 as 17 to 19:

"ANNEX PD
Public Debt

(In accordance with Article 26(12))

No claim that a restructuring of debt of a Contracting Party breaches an obligation under Part III of this Treaty may be submitted to, or if already submitted, be pursued under Article 26(4) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 10(8).

Notwithstanding Article 26(2), and subject to the previous paragraph of this Annex, an Investor may not submit a claim under Article 26(4) that a restructuring of debt of a Contracting Party breaches an obligation under Part III of this Treaty other than Article 10(8),[13] unless 270 days have elapsed from the date of submission by the Investor of the written request for amicable settlement pursuant to Article 26(1).

For the purposes of this Annex:

(a) "negotiated restructuring" means the restructuring or rescheduling of debt of a Contracting Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 75% of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Contracting Party or by entities owned or controlled by it, have consented to such debt exchange or other process;

(b) "governing law" of a debt instrument means a jurisdiction's legal and regulatory framework applicable to that debt instrument.

[13] For greater certainty, a breach of Article 10(8) does not occur merely by virtue of a different treatment provided by a Contracting Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spill over effects, or on grounds of eligibility for debt restructuring.

For greater certainty, "debt of a Contracting Party" includes the debt of regional and local governments and authorities within its Area.

ANNEX NPT

LIST OF CONTRACTING PARTIES TO WHICH PART III DOES NOT APPLY IN RESPECT OF AN INVESTMENT IN THEIR AREA OF AN INVESTOR OF ANOTHER CONTRACTING PARTY REGARDING ENERGY MATERIALS AND PRODUCTS OR ACTIVITIES EXCLUDED BY THE LATTER CONTRACTING PARTY IN ANNEX NI

(In accordance with Article 16 bis)

1. Japan

ANNEX IA-NI

LIST OF CONTRACTING PARTIES NOT GIVING UNCONDITIONAL CONSENT TO THE SUBMISSION TO INTERNATIONAL ARBITRATION OF A DISPUTE RELATED TO AN INVESTMENT IN THEIR AREA OF AN INVESTOR OF ANOTHER CONTRACTING PARTY REGARDING ENERGY MATERIALS AND PRODUCTS OR ACTIVITIES EXCLUDED BY THE LATTER CONTRACTING PARTY IN ANNEX NI

(In accordance with Article 26(3)(d))

1. Switzerland
2. Türkiye"

Article 11

These amendments shall apply provisionally and enter into force in accordance with CCDEC 2024 [to be filled on the day of adoption].