

Towards Green Mediation under the Energy Charter Treaty

Prof. Dr. Matthias Vanhullebusch, Faculty of Law, Hasselt University

The climate and energy crisis have accelerated the transition towards renewable energy resources, including windmills and solar panels. Within the European Union, the Green Deal shows proof of regulators' aim to boost innovation towards energy efficiency and sustainability. Due to the presumption of overriding public interests, member states are entitled to remove bureaucratic hurdles and speed up permit procedures to build renewable energy infrastructures (see Directive 2023/2413). Yet, the legitimacy of the permit process is undermined when standardized environmental impact assessments are cut short to quickly achieve energy security and autonomy. Therefore, environmental groups are likely to challenge energy companies' building permits and exploitation licenses in court – potentially resulting in the annulment of those earlier permits and in inevitable financial and reputational damages.

The Energy Charter Treaty shares those energy efficiency and sustainability objectives since Contracting Parties have an obligation to promote transparency when assessing and monitoring environmental impacts of energy projects (Article 19(1)(i)). However, the ECT is yet to include other stakeholders in investor-state dispute resolution when the state fails to uphold its permits. Given the urgency of the climate and energy crisis, an amicable settlement of such disputes could satisfy the demands of all parties concerned in a faster fashion (Article 26(1) ECT).

Mediation efforts facilitated by a third independent, neutral and impartial party, such as the Energy Charter Secretariat (pursuant to the Guide on Investment Mediation), can take place prior to pursuing arbitral or court proceedings, during those or after them. The advantage is that all shareholders and stakeholders, including civil society, can sit at the table, can be heard and their respective grievances can be acknowledged. Since the parties have ownership over the mediation process and outcome, the settlement of such dispute will more likely be respected too.