

PR Fact Sheet | Provisional Application

Russia was bound by the Energy Charter Treaty, including its dispute resolution provisions; its denial of that fact violates international law

The Signatories to the Energy Charter Treaty undertook to apply the Treaty provisionally (pending ratification), unless their national law is inconsistent with provisional application.¹

Up until HVY's commencement of the Arbitrations, Russia gave no indication – whether before, during or after its signing of the Energy Charter Treaty, which took place in 1994 – that it had any issues with the provisional application of the ECT, and even pushed for a strong provisional application regime during the negotiations. In fact, Russia's conduct expressly confirmed the *lack* of any inconsistencies between Russian law and the Treaty's provisional application. All that while, Russia was acutely aware of the importance to the other ECT States and their investors of the Treaty's provisional application mechanism and its dispute settlement provisions – one of the "*pillars*" of the Energy Charter Treaty, rendering its protections enforceable. It knew well that its conduct in that respect triggered their legitimate expectations.

Under these circumstances, Russia repeatedly made statements and representations both within its government and parliament and to the outside world as to its unbridled commitment to provisional application of the ECT and a strong legal framework for attracting investors. It also made clear to the other ECT States that it would not hesitate to raise difficulties it may have in relation to the ECT. Until November 2008, Russia's Ministry of Foreign Affairs website announced unreservedly that "[t]he Russian Federation applies [the ECT] on a provisional basis". Russia also confirmed that it would provisionally apply the ECT and its dispute resolution provisions, which provide for international arbitration, in official reports presented to the ECT Secretariat. For instance, Russia circulated a [note](#) at a plenary meeting of the ECT Conference on 8 July 1997 confirming its Government's decision to provisionally apply the ECT without mention of any qualification. Moreover, in a 2004 report available through the [website](#) of the ECT Secretariat, Russia's Minister of Energy reiterated that investment disputes with Russia will be settled through international arbitration as a "*key guarantee*" to investors.

After a decade and a half of legal proceedings against HVY, Russia remains unable to produce a single piece of evidence showing that it ever took the position, prior to HVY's commencement of the Arbitrations, that it was not provisionally applying the ECT in full due to an alleged inconsistency with Russian law. The reason is simple – no such document exists.

¹ Provisional application is a mechanism under international law that allows States to give immediate legal effect to obligations contained in an international treaty, without waiting for the completion of the formal requirements for entry into force (such as national ratification).

Allowing Russia to go back on its long-term conduct and express undertakings towards the other ECT States and their investors would violate not only the ECT itself, as well as Dutch law and established Supreme Court case law, but also international law in general.