# EU/Euratom Agreement on the interpretation and application of the Energy Charter Treaty: adoption by the Union

2024/0148(COD) - 02/07/2024 - Legislative proposal

PURPOSE: to adopt the Agreement on the interpretation and application of the Energy Charter Treaty between the European Union, the European Atomic Energy Community and their Member States.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Energy Charter Treaty (ECT) is a multilateral trade and investment agreement applicable to the energy sector that was signed in 1994 and entered into force in 1998. The European Union is a Contracting Party to the ECT, together with Euratom, 22 EU Member States (as of 19 June 2024), as well as Japan, Switzerland, Turkey and most countries from the Western Balkans and the former USSR, with the exception of Russia and Belarus.

In Republic of Moldova v Komstroy, the CJEU held that Article 26(2)(c) ECT must be interpreted as not being applicable to disputes between a Member State and an investor of another Member State concerning an investment made by the latter in the first Member State. Arbitral tribunals nevertheless continue to accept jurisdiction and to hand down awards in intra-EU proceedings. According to the CJEU, any such arbitral award must be regarded as incompatible with EU law.

The effective implementation of Union law is being undermined by the issuing of such awards in intra-EU arbitration proceedings. There is a risk of conflict between the Treaties and the Energy Charter Treaty as interpreted by some arbitral tribunals which, if confirmed by the courts of a third country, would de facto turn into a legal conflict because arbitration awards violating EU law would circulate in the legal orders of third countries.

According to the case law of the Court, the risk of legal conflict is such as to render an international agreement incompatible with EU law. The adoption of an instrument of international law setting out the common understanding of the signatories on the non-applicability of Article 26 of the Energy Charter Treaty as a basis for intra-EU arbitration proceedings should help to achieve that aim. The Commission has successfully concluded negotiations on the terms of such an agreement.

CONTENT : the Commission proposes that the Agreement on the interpretation and application of the Energy Charter Treaty between the European Union, the European Atomic Energy Community and their Member States, be adopted on behalf of the Union.

The agreement is a reflection of the case law of the CJEU and entirely in line with the established position of the Union as expressed on numerous occasions including in open court in third country jurisdictions.

The recitals to the agreement recount the history and context of the agreement, including in particular the interpretation of Union law as handed down by the CJEU, and acknowledge the fact that the effective implementation of Union law is being undermined by the issuing of awards in intra-EU arbitration proceedings. The single provision of substance sets out the common understanding of the parties to the agreement in relation to the inapplicability of Article 26(2)(c) ECT intra-EU and the consequent absence of any legal basis for intra-EU arbitration proceedings as expressed in the inter se agreement.