

United Nations Convention on Transparency in Treaty-based Investor-State Arbitration

2015/0012(NLE) - 11/07/2024 - Legislative proposal

PURPOSE: to conclude, on behalf of the European Union, the United Nations Convention on transparency in treaty-based investor-state arbitration.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the United Nations Commission on International Trade Law (UNCITRAL) adopted on 10 July 2013 rules on transparency for investor-state dispute settlement, which were in turn endorsed by the United Nations General Assembly on 16 December 2013. These provide for all documents to be made public (both decisions of the tribunal and submissions of the parties), for hearings to be open to the public and for interested parties (civil society) to make submissions to the tribunal. Appropriate protections for confidential information are also provided.

The rules became effective on 1 April 2014. They apply automatically to investor-state dispute settlement arising on the basis of treaties concluded after 1 April 2014 where a reference was made therein to UNCITRAL Arbitration rules.

In accordance with a Council Decision, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration was signed, subject to its conclusion at a later date. It is desirable to apply the United Nations Commission on International Trade Law (UNCITRAL) Rules on Transparency in Treaty-based Investor-State Arbitration to investor-State dispute settlement to the greatest extent possible. As regards the Union, the Rules should apply to the Energy Charter Treaty. The Union should not apply the Rules when acting as a respondent in the case of a dispute initiated pursuant to the Energy Charter Treaty against a Member State which is not a party to the Convention, unless agreed upon otherwise with the Member State concerned.

It is now necessary to approve the Convention on behalf of the Union.

CONTENT: the Council draft concerns the approval, on behalf of the European Union, of the Convention on Transparency in Treaty-based Investor-State Arbitration, as negotiated by the Commission under the auspices of the United Nations Commission on International Trade Law (UNCITRAL).

The Convention applies to investment treaties concluded before 1 April 2014 and establishes a mechanism allowing countries and regional economic integration organisations to agree between themselves to apply the UNCITRAL Transparency Rules in disputes covered by investment treaties to which they are parties. It permits both the Union and the Member States to adhere to the Convention and to apply the Transparency Rules to their existing investment treaties.

By signing the Convention, the European Union could become a party to the Convention in respect of the Energy Charter Treaty and the Member States could become a party to the Convention in respect of their existing agreements. The Convention provides for a negative list approach, i.e. the Transparency Rules will apply unless a signatory lists particular agreements as not being subject to the Convention by making a reservation.

