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

2024/0148(COD) - 18/06/2025 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 554 votes to 53, with 37 abstentions, a legislative resolution on the proposal for a decision of the European Parliament and of the Council on the adoption by the Union of 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.

The European Parliament adopted its position at first reading, taking over the Commission's proposal.

The text recalled that in its Komstroy judgment of 2 September 2021, the Court of Justice of the European Union (CJEU) held that Article 26(2)(c) of the Energy Charter Treaty 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 that investor in the first Member State, i.e. intra-EU disputes.

Despite the Komstroy judgment, arbitral tribunals have continued to accept jurisdiction and to issue awards in intra-EU arbitration proceedings which are purportedly based on Article 26(2), point (c), of the Energy Charter Treaty. According to the CJEU, any such award is incompatible with Union law. There is a risk of a conflict between the Treaties, on the one hand, and the Energy Charter Treaty as interpreted by some arbitral tribunals, on the other, which would, if confirmed by the courts of a third country, become a de facto legal conflict where such awards were circulating in the legal orders of third countries.

According to the case law of the CJEU, the risk of a legal conflict is sufficient to render an international agreement incompatible with Union law. The adoption of an instrument of international law, in the form of an agreement setting out the common understanding of the parties to that agreement on the non-applicability of Article 26 of the Energy Charter Treaty as a basis for intra-EU arbitration proceedings, would help to eliminate that risk.

The single provision of substance of the Agreement sets out the common understanding of the Parties to the Agreement regarding the non-applicability of Article 26(2)(c) of the Energy Charter Treaty (ECT) as a basis for intra-EU arbitration.

Under the Agreement, the Contracting Parties reaffirm, for the sake of clarity, their common understanding on the interpretation and application of the Energy Charter Treaty, according to which Article 26 of that Treaty cannot and will never serve as a legal basis for intra-EU arbitration proceedings.