Basic information

2024/0146(NLE) NLE - Non-legislative enactments Decision	Awaiting final decision
EU/Euratom Agreement on the interpretation and application of the Energy Charter Treaty: adoption by Euratom **Subject** 3.60 Energy policy 3.60.15 Cooperation and agreements for energy	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ITRE Industry, Research and Energy	Chair on behalf of committee BUDKA Borys (EPP)	12/09/2024
	Shadow rapporteur NICA Dan (S&D) SZYDŁO Beata (ECR) VEDRENNE Marie-Pierre (Renew) BLOSS Michael (Greens/EFA) MESURE Marina (The Left) SYPNIEWSKI Marcin (ESN)	

Committee for opinion	Rapporteur for opinion	Appointed
INTA International Trade	CAVAZZINI Anna (Greens/EFA)	02/12/2024
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

European Commission

Commission DG	Commissioner
Legal Service	VON DER LEYEN Ursula

Key events

Date	Event	Reference	Summary
02/07/2024	Legislative proposal published	COM(2024)0256	Summary
07/10/2024	Committee referral announced in Parliament		
29/01/2025	Vote in committee		
03/02/2025	Committee report tabled for plenary, 1st reading/single reading	A10-0008/2025	Summary
18/06/2025	Decision by Parliament	T10-0127/2025	Summary
18/06/2025	Results of vote in Parliament		

Technical information

Procedure reference	2024/0146(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consultation of Parliament
Legislative instrument	Decision
Legal basis	Euratom Treaty A 203
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Awaiting final decision
Committee dossier	ITRE/10/00462

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	INTA	PE766.780	06/12/2024	
Committee report tabled for plenary, 1st reading/single reading		A10-0008/2025	03/02/2025	Summary
Text adopted by Parliament, 1st reading/single reading		T10-0127/2025	18/06/2025	Summary

European Commission

Document type	Reference	Date	Summary
Commission document (COM)	COM(2024)0256	02/07/2024	Summary

Additional information

Source	Document	Date

European Commission	EUR-Lex	

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

2024/0146(NLE) - 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.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

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, C741/19, the Court of Justice of the European Union (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 purportedly based on Article 26(2)(c) ECT. According to the CJEU, any such arbitral award must be regarded as incompatible with EU law. Such an award cannot therefore produce any effect and thus cannot be enforced in order to pay the compensation awarded by it.

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 risk of legal conflict should be eliminated. 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, on behalf of the European Union and the EURATOM, and the Member States have successfully concluded negotiations on the terms of such an agreement. The common understanding contained in that Agreement has been reiterated in a Declaration on the legal consequences of the judgment of the Court of Justice in Komstroy and common understanding on the non-applicability of Article 26 of the Energy Charter Treaty as a basis for intra-EU arbitration proceedings, of 26 June 2024.

CONTENT: the Commission proposal calls for the adoption 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 Agreement is a necessary measure to achieve the objectives of the Union energy policy, as detailed above. The Euratom Treaty does not provide the necessary powers. The decision to authorise signature of the agreement on behalf of the European Atomic Energy Community should therefore be adopted on the basis of Article 203 EURATOM.

The European Atomic Energy Community is also a Contracting Party to the ECT and as such, it falls to the Council to decide whether the Euratom should become a party to the Agreement interpreting that Treaty. Existing case law of the CJEU and numerous interventions of the Commission before arbitral tribunals and courts of third countries have not been sufficient to ensure an effective implementation of Union law and elimination of the risk of conflict between the ECT and the FEU and EU Treaties. If it is to have the desired effect on the decision-making practice of arbitral tribunals, the act to be adopted must be an act of international law. The Commission is, therefore, of the view that the appropriate response is to adopt an instrument in the form of an agreement between the parties regarding the interpretation of the treaty.

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

2024/0146(NLE) - 03/02/2025 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Industry, Research and Energy adopted the report by Borys BUDKA (EPP, PL) on the proposal for a Council decision on the adoption by the European Atomic Energy Community 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 committee responsible recommends that the European Parliament approves the Commission's proposal.

The Commission negotiated an 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 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.

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 serve as a basis for arbitration proceedings, and that the sunset clause does not apply.

The common understanding is based on the following elements of Union law:

- the interpretation of the Court of Justice of the European Union that Article 26 of the Energy Charter Treaty does not apply, and should never have applied, as a basis for intra-EU arbitration proceedings; and

- the primacy of European Union law, recalled in Declaration No 17 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, as the rule of international law governing conflicts of standards in the mutual relations of Member States, from which it follows that, in any event, Article 26 of the Energy Charter Treaty does not apply and cannot apply as a basis for intra-EU arbitration procedures.

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

2024/0146(NLE) - 18/06/2025 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 557 votes to 47, with 46 abstentions, a legislative resolution on the proposal for a Council decision on the adoption by the European Atomic Energy Community 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.

Parliament approved the Commission's proposal.

The Commission has negotiated an Agreement on the interpretation and application of the Energy Charter Treaty (ECT) between the European Union, the European Atomic Energy Community and their Member States. 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.