



Council of the
European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the conclusion, on behalf of the European Union,
of the United Nations Convention on Transparency in Treaty-based
Investor-State Arbitration

COUNCIL DECISION (EU) 2024/...

of ...

**on the conclusion, on behalf of the European Union,
of the United Nations Convention on Transparency
in Treaty-based Investor-State Arbitration**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(6), second subparagraph, point (a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ Consent of ... (not yet published in the Official Journal).

Whereas:

- (1) Following the entry into force of the Treaty of Lisbon, foreign direct investment is included in the list of matters falling under the common commercial policy. Pursuant to Article 3(1), point (e), of the Treaty on the Functioning of the European Union (TFEU), the Union has exclusive competence as regards the common commercial policy.
- (2) In Opinion 2/15 of 16 May 2017, the Court of Justice of the European Union (CJEU) clarified the division of competence between the Union and Member States in the context of the Free Trade Agreement between the European Union and the Republic of Singapore², stating that removing disputes from the jurisdiction of the courts of the Member States cannot be of a purely ancillary nature and cannot, therefore, be established without the Member States' consent. The CJEU clarified the procedure for the conclusion of mixed agreements in Opinion 1/19 of 6 October 2021 on the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

² OJ L 294, 14.11.2019, p. 3.

- (3) In accordance with Council Decision (EU) 2024/...³⁺, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration ('the Convention') was signed on behalf of the Union on ..., subject to its conclusion at a later date.
- (4) It is desirable to apply the United Nations Commission on International Trade Law (UNCITRAL) Rules on Transparency in Treaty-based Investor-State Arbitration ('the Rules') to investor-State dispute settlement to the greatest extent possible. As regards the Union, the Rules should apply to the Energy Charter Treaty⁴.
- (5) It is noted that the second footnote of article 1 of the Rules means that the Union, when acting as a respondent, should apply article 7, paragraph 5, of the Rules in order to prevent the disclosure of information which the Union considers to be contrary to the essential security interests of a Member State.
- (6) 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.
- (7) The Convention should be approved on behalf of the Union.

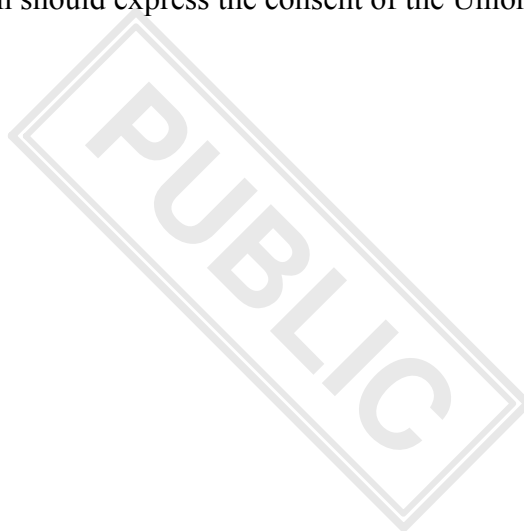
³ Council Decision (EU) 2024/... of ... on the signing, on behalf of the European Union, of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (OJ L, ..., ELI: ...).

⁺ OJ: Please insert number and publication details for Decision contained in document ST 7010/24 and complete the relevant footnote.

⁴ OJ L 380, 31.12.1994, p. 24.

- (8) In accordance with the Treaties, the Commission should express the consent of the Union to be bound by the Convention,

HAS ADOPTED THIS DECISION:



Article 1

The Convention on Transparency in Treaty-based Investor-State Arbitration ('the Convention'), as negotiated by the Commission under the auspices of the United Nations Commission on International Trade Law (UNCITRAL), is hereby approved on behalf of the European Union⁵.

Article 2

The Commission shall designate the person(s) empowered to deposit the instrument of approval on behalf of the Union as provided for in Article 7 of the Convention.

Article 3

When depositing the instrument of approval on behalf of the Union, the person(s) empowered in accordance with Article 2 shall make a reservation in accordance with article 3(1)(a) of the Convention according to which the Union shall not apply the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ('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.

⁵ The text of the Convention is published in ... [insert OJ reference].

Article 4

Five years after the entry into force of the Convention for the Union, the Commission shall submit a report on the operation of the Rules in disputes where the Union has been acting as a respondent. On the basis of that report, the Council, on a proposal from the Commission, shall re-evaluate the reservation referred to in Article 3 and adopt a decision on the amendment or withdrawal of that reservation. If no agreement can be found in the Council, the reservation referred to in Article 3 shall remain valid, subject to periodic review every five years. The Council shall adopt a decision on the withdrawal of that reservation if all Member States conclude the Convention or when Article 47(3) of the Energy Charter Treaty ceases to have effect for the Union.

Article 5

This Decision shall enter into force on the date of its adoption.

Done at ..., ...

For the Council

The President
