Council of the European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION on the denial of benefits under Part III of the Energy Charter Treaty by the Union to any legal entity that is owned or controlled by citizens or nationals of the Russian Federation or of the Republic of Belarus, and any investment within the meaning of the Energy Charter Treaty which is an investment of an investor of the Russian Federation or of the Republic of Belarus

COUNCIL DECISION (EU) 2024/…

of …

on the denial of benefits under Part III of the Energy Charter Treaty by the Union to any legal entity that is owned or controlled by citizens or nationals of the Russian Federation or of the Republic of Belarus, and any investment within the meaning of the Energy Charter Treaty which is an investment of an investor of the Russian Federation or of the Republic of Belarus

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(9) thereof,

Having regard to the Council and Commission Decision 98/181/EC, ECSC, Euratom of 23 September 1997 on the conclusion, by the European Communities, of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects[1], and in particular Article 3(2) thereof,

Having regard to the proposal from the European Commission,

[1] OJ L 69, 9.3.1998, p. 1.

Whereas:

(1) The Energy Charter Treaty (the 'Agreement') was concluded by the Union by Council and Commission Decision 98/181/EC, ECSC, Euratom and entered into force on 16 April 1998.

(2) Pursuant to Article 17(1) of the Agreement, each Contracting Party reserves the right to deny the advantages of Part III of the Agreement to a legal entity if citizens or nationals of a third State own or control such entity and if that entity has no substantial business activities in the area of the Contracting Party in which it is organised.

(3) Pursuant to Article 17(2), point (b), of the Agreement, each Contracting Party reserves the right to deny the advantages of Part III of the Agreement to an investment, if the denying Contracting Party establishes that such investment is an investment of an investor of a third State with or as to which the denying Contracting Party adopts or maintains measures that prohibit transactions with investors of that State, or would be violated or circumvented if the benefits of Part III of the Agreement were accorded to investors of that State or to their investments.

(4) The Union has progressively imposed restrictive measures against the Russian Federation, initially in response to the illegal annexation of Crimea and Sevastopol and the deliberate destabilisation of Ukraine. The Union expanded the restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk 'oblasts' of Ukraine, and the ordering of Russian armed forces into those areas. In response to Russia's war of aggression against Ukraine, the Union significantly expanded the restrictive measures.

(5) In parallel, the restrictive measures introduced by the Union concerning the Republic of Belarus has been expanded in response to the country's involvement in Russia's war of aggression against Ukraine.

(6) Neither the Russian Federation nor the Republic of Belarus is a Contracting Party to the Agreement. However, investors from those countries could attempt to use corporations established in the territory of a Contracting Party to the Agreement to allege that the Union or its Member States have acted inconsistently with the investment protection obligations of the Agreement and hence bring investor-state dispute settlement proceedings against the Union or its Member States.

(7) The Union's actions and those of its Member States are consistent with the Agreement and other relevant agreements and, in any event, claims with respect to such measures are precluded pursuant to the applicable instruments and general international law. Notwithstanding this, it is appropriate to take complementary procedural steps to avoid investor-state dispute settlement proceedings against the Union or its Member States under the Agreement.

(8) Article 17 of the Agreement allows Contracting Parties to deny the benefits of the investment protection provisions of the Agreement to investors from non-Contracting Parties that seek to abuse the Agreement by bringing investment claims in the aforementioned situations (‘denial of benefits’).

(9) It is appropriate to invoke Article 17(1) of the Agreement with regard to any legal entity that is owned or controlled by citizens or nationals of the Russian Federation or of the Republic of Belarus and that has no substantial business activities in the area of the Contracting Party in which it is organised. It is likewise appropriate to invoke Article 17(2), point (b), of the Agreement with regard to any investment within the meaning of the Agreement which is an investment of an investor of the Russian Federation or of the Republic of Belarus in the circumstances described in that provision.

(10) The denial of benefits pursuant to Article 17 of the Agreement should be implemented by the Commission by circulating within the Energy Charter Conference the Declaration in the Annex to this Decision on behalf of the Union and all Member States that are Contracting Parties to the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

1. The Union shall deny, pursuant to Article 17(1) of the Energy Charter Treaty, the advantages of Part III of that agreement to any legal entity that is owned or controlled by citizens or nationals of the Russian Federation or of the Republic of Belarus, and that has no substantial business activities in the area of the Contracting Party in which it is organised.

2. The Union shall deny, pursuant to Article 17(2), point (b), of the Energy Charter Treaty, the advantages of Part III of that agreement to any investment of an investor of the Russian Federation or of the Republic of Belarus in the circumstances described in that provision.

Article 2

The Commission shall, on behalf of the Union, give effect to this Decision by circulating the Declaration in the Annex within the Energy Charter Conference.

Done at …,

For the Council
The President

ANNEX

DECLARATION

on behalf of the European Union, the European Atomic Energy Community (Euratom) and all Member States that are, or have been, Contracting Parties to the Energy Charter Treaty

The European Union, the European Atomic Energy Community (Euratom) and all Member States that are, or have been, Contracting Parties to the Energy Charter Treaty (the 'Agreement') herewith deny the advantages of Part III of the Agreement to:

(1) any legal entity that is owned or controlled by citizens or nationals of the Russian Federation or of the Republic of Belarus and that has no substantial business activities in the area of the Contracting Party in which it is organised, pursuant to Article 17(1) of the Agreement; and

(2) any investment within the meaning of the Agreement which is an investment of an investor of the Russian Federation or of the Republic of Belarus, pursuant to Article 17(2), point (b), of the Agreement.

The Union and its Member States have adopted and maintain restrictive measures against the Russian Federation over its war of aggression against Ukraine, as well as against the Republic of Belarus as accomplice in this war of aggression. The restrictive measures include measures that (i) prohibit transactions with investors of the Russian Federation and of the Republic of Belarus, and (ii) would be violated or circumvented if the benefits of Part III of the Agreement were accorded to investors of those states or to their investments.