Official Journal
of the European Union

EN
L series

2024/2118

31.7.2024

COUNCIL DECISION (EU) 2024/2118

of 25 June 2024

on the signing, 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(5) thereof,

Having regard to the proposal from the European Commission,

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 Singapore [1], 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).

(3) On 10 February 2014, the Council and the Member States authorised the Commission to negotiate a convention on the application of rules on transparency for investor-State dispute settlement under the auspices of the United Nations Commission on International Trade Law (UNCITRAL).

(4) On 9 July 2014, those negotiations were successfully concluded. On 10 December 2014, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration ('the Convention') was adopted by the United Nations General Assembly. On 17 March 2015, the Convention was opened for signature in Port Louis, Mauritius, and thereafter at the United Nations Headquarters in New York.

(5) It is desirable to apply the 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 Treaty [2].

(6) 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.

(7) 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.

(8) The Convention should be signed on behalf of the Union.

(9) In accordance with the Treaties, the Commission should ensure the signing of the Convention, subject to its conclusion,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the European Union of the Convention on Transparency in Treaty-based Investor-State Arbitration ('the Convention') is hereby authorised, subject to the conclusion of the said Convention.

(1) OJ L 294, 14.11.2019, p. 3.
(2) OJ L 380, 31.12.1994, p. 24.

Article 2

The Commission shall ensure the signing of the Convention.

Article 3

When signing the Convention on behalf of the Union, the Commission shall make a reservation in accordance with article 3(1)(*a*) of the Convention according to which the Union shall not apply the United Nations Commission on International Trade Law (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.

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 Luxembourg, 25 June 2024.

For the Council

The President

H. LAHBIB