



MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS
SECRETARIA-GERAL
DEPARTAMENTO DE ASSUNTOS JURÍDICOS

Secretary-General of
the Energy Charter Secretariat
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VOSSA REF^a.	NOSSA REF^a.	DATA	PROCESSO
	19233/2024		DAJ/DIP- 1354/2018

Subject: Energy Charter Treaty – Request by France to transmit information

Regarding the subject above, I have the honour to inform you that France reached out to Portugal, requesting that we inform the Energy Charter Secretariat and the Contracting Parties to the Energy Charter Treaty of the content of its Note Verbal of the 19th of December 2023.

The Government of the Portuguese Republic, under its Article 49, is the Depository of the Energy Charter Treaty.

S.  R.

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A depository of a treaty has obligations towards the parties and the States entitled to become parties to the treaty, performing the functions provided for in that same treaty.

The French Republic withdrew from the Energy Charter Treaty, on the 7th of December 2022, having ceased to be a Contracting Party to this Treaty, on the 8th of December 2023, under its Article 47, paragraph 2.


As such, the information under the above mentioned Note Verbale was made after this State ceased to be a Contracting State to the Treaty.

Therefore, it is our understanding that it is not up to the Depository to inform other Contracting States of the content of the Note Verbale

Please find attached a copy of this Note Verbal in the French and English languages.

Yours sincerely,

The Director of the Department of Legal Affairs



Patrícia Galvão Teles



RÉPUBLIQUE FRANÇAISE

*Liberté
Égalité
Fraternité*

Les autorités de la République française ont l'honneur de communiquer ce qui suit au secrétariat de la Charte de l'Energie et aux parties contractantes du Traité sur la Charte de l'Energie.

La République française n'est plus partie au Traité sur la Charte de l'Energie à compter du 8 décembre 2023, à la suite de la notification de son retrait le 1^{er} décembre 2022, dont il a été accusé réception par le dépositaire le 7 décembre 2022.

Les investissements en provenance ou à destination de pays tiers à l'Union européenne parties au Traité sur la Charte de l'Energie qui ont été effectués pendant la période au cours de laquelle la République française y était partie, soit entre le 27 décembre 1999 et le 7 décembre 2023, continueront d'être régis par ses dispositions dans les conditions prescrites par l'article 47, paragraphe 3.

Du point de vue des autorités de la République française, le Traité sur la Charte de l'Energie n'avait pas vocation à s'appliquer dans les relations, dites intra-européennes, de la France avec les autres Etats membres de l'Union européenne, d'une part, ou avec l'Union européenne et la Communauté européenne de l'énergie atomique (Euratom), d'autre part. L'article 47, paragraphe 3, précité ne devrait par conséquent produire aucun effet juridique dans ces relations intra-européennes.

Les autorités de la République française souhaitent en tout état de cause rappeler qu'il a été confirmé par l'arrêt *Komstroy* et l'avis 1/20 rendus par la Cour de justice de l'Union européenne que l'article 26, paragraphe 2, alinéa (c), du Traité sur la Charte de l'Energie était inapplicable dans des relations intra-européennes. Il ne saurait par conséquent être valablement invoqué par des investisseurs français à l'encontre d'autres Etats membres, de l'Union européenne ou d'Euratom, ou par des investisseurs originaires d'autres Etats membres de l'Union contre la France, ni faire l'objet, dans de telles situations intra-européennes, d'une application prolongée au titre de l'article 47, paragraphe 3, précité./.

[Traduction de courtoisie / Courtesy translation]

The authorities of the French Republic respectfully submit the following communication to the Energy Charter Secretariat and to the contracting parties to the Energy Charter Treaty.

The French Republic is no longer a contracting party to the Energy Charter Treaty as from the 8th December 2023 following its notification of withdrawal sent on the 1st December 2022, the receipt of which was acknowledged by the depositary on the 7th of December 2022.

Investments originating from or made in third countries to the European Union that are parties to the Energy Charter Treaty and realized during the period when the French Republic was a contracting party, *i.e.* from the 27th December 1999 until the 7th December 2023, will continue to be governed by its provisions under the conditions set forth under article 47, paragraph 3.

The authorities of the French Republic are of the opinion that the Energy Charter Treaty was not intended to apply to so-called 'intra-EU' relations between the French Republic and other Member States of the European Union or between the French Republic and the European Union and the European Atomic Energy Community (Euratom). Article 47, paragraph 3, should accordingly not produce any legal effects in such intra-EU relations.

The authorities of the French Republic recall in any event that the *Komstroy* judgement and the opinion 1/20 issued by the European Court of Justice have confirmed that article 26, paragraph 2(c), of the Energy Charter Treaty is inapplicable in intra-EU relations. It shall accordingly not be validly invoked by French investors against other Member States, the European Union or Euratom or by investors originating from other Member States of the European Union against the French Republic. It shall also not be subject to any prolonged application in such intra-EU relations pursuant to article 47, paragraph 3./.