



**MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS**  
**SECRETARIA-GERAL**  
**DEPARTAMENTO DE ASSUNTOS JURÍDICOS**

Secretary-General of  
the Energy Charter Secretariat  
Ambassador Guy Lentz  
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<b>VOSSA REF<sup>a</sup>.</b>	<b>NOSSA REF<sup>a</sup>.</b>	<b>DATA</b>	<b>PROCESSO</b>
	33580/2023		DAJ/DIP- 1354/2018

**Subject:** Energy Charter Treaty – Withdrawal by Poland

Regarding the subject above, I have the honour to inform you that, on the 28<sup>th</sup> of December 2022, the Republic of Poland notified the Government of the Portuguese Republic, in its capacity as Depository of the Energy Charter Treaty, of its withdrawal from the Energy Charter Treaty, signed in Lisbon, on the 17<sup>th</sup> of December 1994.

Furthermore, the Republic of Poland also made the following notification:



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*In accordance with Article 30(4) of the Vienna Convention on the Law of the Treaties, concluded in Vienna on 23 May 1969 and with customary international law, the arbitration clause contained in Article 26 of the Energy Charter Treaty, which is an earlier treaty, may not be applied from 1 May 2004, i.e. from the date of accession of the Republic of Poland to the European Union, in disputes between investors from a Member State of the European Union and another Member State of the European Union, due to its incompatibility in the above respect with the Treaty on the Functioning of the European Union, which is the later treaty, The incompatibility of the arbitration clause contained in Article 26 of the ECT with EU law in the above respect was confirmed by the judgement of the Court of Justice of the European Union of 2 September 2021 in Case C-741/19 République de Moldavie v Komstroy LLC. In light of the above, arbitral tribunals established under the ECT to resolve investments dispute between investors from EU Member States and the Republic of Poland do not have jurisdiction to hear cases due to the lack of a valid consent to arbitrate.*

Under Article 47, paragraph 2 of the Energy Charter Treaty, any such withdrawal shall take effect upon the expiry of one year after the date of the receipt of the notification by the Depository.

Therefore, the withdrawal from the Energy Charter Treaty by the Republic of Poland shall take effect on the 29<sup>th</sup> of December 2023.



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Please find attached a copy in the English language.

Yours sincerely,

The Director of the Department of Legal Affairs



Patrícia Galvão Teles



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The Embassy of the Republic of Poland in Lisbon presents its compliment to the Ministry of Foreign Affairs of the Portuguese Republic and notifies the Government of the Portuguese Republic as the Depositary of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related aspects of environmental protection, drawn up in Lisbon on December 17, 1994 that by this notification the Republic of Poland withdraws from the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related aspects of environmental protection, drawn up in Lisbon on December 17, 1994 in accordance with its article 47 paragraph 1.

Furthermore Republic of Poland notifies what follows:

In accordance with Article 30(4) of the Vienna Convention on the Law of Treaties, concluded in Vienna on 23 May 1969 and with customary international law, the arbitration clause contained in Article 26 of the Energy Charter Treaty, which is an earlier treaty, may not be applied

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**L I S B O A**

from 1 May 2004, i.e. from the date of accession of the Republic of Poland to the European Union, in disputes between investors from a Member State of the European Union and another Member State of the European Union, due to its incompatibility in the above respect with the Treaty on the Functioning of the European Union, which is the later treaty. The incompatibility of the arbitration clause contained in Article 26 of the ECT with EU law in the above respect was confirmed by the judgment of the Court of Justice of the European Union of 2 September 2021 in Case C-741/19 *République de Moldavie v Komstroy LLC*. In light of the above, arbitral tribunals established under the ECT to resolve investments dispute between investors from EU Member States and the Republic of Poland do not have jurisdiction to hear cases due to the lack of a valid consent to arbitrate.

The Embassy of the Republic of Poland avails itself of this opportunity to renew the Ministry of Foreign Affairs of Portuguese Republic the assurances of its highest considerations.

Lisbon, 27 December 2022

