

S.  R.

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

Secretary-General of  
the Energy Charter Secretariat  
Ambassador Guy Lentz  
Energy Charter Secretariat  
Boulevard de la Woluwe, 46  
B. 1200 Brussels  
Kingdom of Belgium

<b>VOSSA REF<sup>a</sup>.</b>	<b>NOSSA REF<sup>a</sup>.</b>	<b>DATA</b>	<b>PROCESSO</b>
	18808/2024		DAJ/DIP- 1354/2018

**Assunto:** Energy Charter Treaty – Request by Germany to transmit information

Regarding the subject above, I have the honour to inform you that Germany 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 28<sup>th</sup> of December 2023.

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

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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 Federal Republic of Germany withdrew from the Energy Charter Treaty, on the 19<sup>th</sup> of December 2022, having ceased to be a Contracting Party to this Treaty, on the 20<sup>th</sup> 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 English language.

Yours sincerely,

A Diretora do Departamento



Patrícia Galvão Teles



Embaixada  
da República Federal da Alemanha  
Lisboa



sgmne  
03-01-2024

82/2024

Proc.: Wi 402.30  
N.V. Nº 203/2023

### Note Verbale

The Embassy of the Federal Republic of Germany presents its compliments to the Ministry of Foreign Affairs of the Portuguese Republic and wishes to take the Federal Republic of Germany's withdrawal from the Energy Charter Treaty, effective since 21 December 2023, as an opportunity to kindly request the Ministry to inform the Energy Charter Secretariat and the Contracting Parties to the Energy Charter Treaty of the following:

Investments made in the Federal Republic of Germany during the period in which the Federal Republic of Germany was a Contracting Party to the Energy Charter Treaty, i.e. from 16 April 1998 to 20 December 2023, by investors originating from Contracting Parties to the Energy Charter Treaty outside the European Union (EU) will continue to be governed by the provisions of the Energy Charter Treaty under the conditions set forth under Article 47 (3). The same applies to investments made during this period by investors originating from the Federal Republic of Germany in Contracting Parties to the Energy Charter Treaty outside the EU.

The Federal Republic of Germany is of the opinion that the Energy Charter Treaty does not apply and has never applied to intra-EU relations between the Federal Republic of Germany and other EU Member States and between the Federal Republic of Germany on the one hand and the EU or the European Atomic Energy Community (Euratom) on the other. Article 47 (3) has no legal effect in all the aforementioned intra-EU relations.

The Komstroy judgement and Opinion 1/20 issued by the European Court of Justice have confirmed that Article 26 (2) (c) of the Energy Charter Treaty is not and has never been applicable in intra-EU relations. Article 26 (2) (c) can therefore neither be validly invoked by German investors against other EU Member States or Euratom nor by investors from other EU Member States or Euratom against the Federal Republic of Germany. This provision of the Energy Charter Treaty is therefore also not subject to any prolonged application in such intra-EU relations pursuant to Article 47 (3).

Ao

Ministério dos Negócios Estrangeiros

- Serviços de Protocolo -

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The Embassy of the Federal Republic of Germany avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Portuguese Republic the assurance of its highest consideration.

Lisbon, 28 December 2023

