

Insights

INTERIM ROMANIAN ADMINISTRATION CALLED FOR A QUICK RESOLUTION OF THE INTRA-EU INVESTMENT ARBITRATION CONFLICT

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As LIDW 2025 was roaring to its conclusion in London, a clear address in Bucharest highlighted the evolving conflict between EU law and intra-EU investment arbitration. On 5 June 2025, in opening the Bucharest Arbitration Days, Cătălin Predoiu, the then interim PM of Romania and a fellow disputes lawyer, [stated](#) emphatically that:

“This conflict must be repaired, but this must be done quickly, and in a manner that will be acceptable to all players involved, foreign investors and states alike.

I strongly believe that existing investors must feel their investments are secured and protected, and that Romania continues to remain attractive for future investment, from our European partners and beyond.”

Luca Niculescu, a secretary of state in the Romanian Ministry of Foreign Affairs, also addressed delegates, further emphasizing the sentiment in Mr Predoiu’s statement for a time past when the validity of foreign investment protections in the EU and the mechanism for investors to resolve investment disputes with EU Member States were clear.

Although it cannot be certain that this sentiment will translate into Romania breaking rank with the EU on this conflict (as Hungary has), Mr Predoiu’s address appeared to be an appeal for a quick, practical resolution, rather than a continuation of the EU’s current crusade against intra-EU investment arbitration and international law in general.

This blog provides an overview of the current state of the conflict. It further explores the basis of Hungary’s difference in opinion with the EU concerning the Energy Charter Treaty (“ECT”). It then concludes by discussing the connection between Hungary’s current position and Mr Predoiu’s call for a rapid resolution acceptable to foreign investors and States alike.

OVERVIEW OF THE CURRENT CONFLICT BETWEEN EU LAW & INVESTMENT ARBITRATION

As European international arbitration practitioners know well, the 2018 decision of the Court of Justice of the EU (“**CJEU**”) in *Achmea* ruled as a matter of EU law that investor-state dispute resolution (“**ISDS**”) provisions providing for arbitration in investment treaties between EU Member States are incompatible with EU law and are therefore inapplicable. This was followed by two further CJEU decisions in the cases of *Komstroy* and *PL Holdings*, which confirmed that this incompatibility remains regardless of whether the provision is contained in an intra-EU bilateral treaty or a multilateral treaty involving intra- and extra-EU States such as the ECT.

For the purposes of EU law, these judicial decisions have retrospective effect. If the EU law principle of primacy exists in international law and is applicable as a conflict rule, the effect of these CJEU decisions would be that intra-EU ISDS provisions providing for arbitration were never applicable. This is the EU’s current position.

The initial set of political actions came after the *Achmea* decision. On 15 January 2019, the EU and its Member States declared, amongst other things, their endorsement of the *Achmea* decision. Further, on 5 May 2020, 23 EU Member States signed an agreement for the termination of intra-EU bilateral investment treaties (the “**Intra-EU BIT Termination Agreement**”).

The second set of political actions followed the *Komstroy* decision, which concerned specifically the ECT. It is here where Hungary broke rank with the rest of the EU. In particular, on 26 June 2024, save for Hungary, all other EU Member States declared their endorsement of *Komstroy* and their common understanding that the ISDS provision in the ECT “*cannot and **never could** serve as a legal basis for intra-EU arbitration proceedings*” (emphasis added).

On 23 June 2025, the General Secretariat of the EU Council proposed a decision to be made by the European Parliament and of the EU Council for EU and its Member States to adopt an agreement on the interpretation and application of the ECT in the same frame as the earlier 26 June 2024 declaration.

HUNGARY’S UNILATERAL DECLARATION

Hungary issued its own declaration on 26 June 2024. In this declaration, Hungary confirms that the ISDS provision in the ECT “*shall be interpreted and applied in such a way that it **shall no longer** serve as a legal basis for*” intra-EU investment arbitrations (emphasis added). It has deliberately refrained from declaring that such a provision “*never could*” serve as a legal basis for intra-EU investment arbitrations. This signals a change in Hungary’s position regarding the primacy of EU law in international law.

Further, in its unilateral declaration, Hungary referred to the possibility for the EU and its Member States to modify or amend the ISDS provision in the ECT pursuant to Articles 40 and 41 of the VCLT, which contain the customary international law principles addressing amendments and *inter se* modifications of treaties. The reference to these Articles of the VCLT can be read as a call for

the EU to enact its current rejection of intra-EU investment arbitration pursuant to recognised mechanisms under international law, rather than strictly insisting upon the primacy of EU law in international law.

This is certainly how the EU Commission read it. In its [25 July 2024 press release](#), the EU Commission stated that Hungary's unilateral declaration "*further claims that this effect for the future will only start once the Energy Charter Treaty has been amended*".

This further derogation of confidence in the EU law principle of primacy, and therefore the finality and binding nature of the CJEU's decisions under international law, is significant. The application of the principle of primacy of EU law as a rule of conflict under international law underpins the intra-EU objection in intra-EU investment arbitrations and related enforcement proceedings.

As the EU Commission [recognised](#):

"Hungary's unilateral declaration contradicts the decision of the [CJEU], as well as the Union's position vis-à-vis arbitration tribunals and courts of third countries... Furthermore, by contradicting an interpretation given by the Court, Hungary seems to disrespect the final, authoritative and binding nature of judgments of the Court of Justice."

CONCLUSION

Boiled down to its central element, the conflict is about the primacy and ability of EU law and the decisions of the CJEU to override international law principles and dictate their application. There is no issue for the EU to change its policy in rejecting intra-EU investment arbitrations; its Member States can implement this change through withdrawal or termination of the relevant treaties and/or their ISDS provisions pursuant to international law (as have already been done via the Intra-EU BIT Termination Agreement). The EU and its Member States simply have to accept the consequences of having previously agreed and ratified these investment treaties providing for arbitration and address all such arbitrations commenced before the relevant ISDS provision is rendered inapplicable by termination under international law. However, the EU is seeking to avoid these consequences by asserting the primacy of EU law in international law.

Recalling Mr Predoiu's belief that "existing investors must feel their investments are secured and protected", the EU's continued assertion of its internal primacy principle in seeking to avoid the effect of clear ISDS provisions in treaties regrettably will lead to a further derogation of investors' confidence. It would be reasonable for existing investors, who made their investments in the EU with a tailored corporate structure to benefit from intra-EU investment treaties, to feel betrayed. These intra-EU investment treaties were voluntarily entered into by EU Member States, and the EU had no issues with the ISDS provisions contained within these treaties previously. It was legitimate for investors to expect to be able to rely upon these protections and resolve disputes via arbitration. The EU's current argument that the ISDS provisions providing for arbitration were never

applicable stands in contrast to that expectation. Indeed, a rapid resolution of this conflict acceptable to foreign investors and States alike would be sensible to maintain the EU's reputation and prevent a further derogation of investors' confidence.

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