Member States/third countries intergovernmental agreements in the field of energy: information exchange mechanism

2011/0238(COD) - 07/09/2011 - Legislative proposal

PURPOSE: to set up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy.

PROPOSED ACT: Decision of the European Parliament and of the Council.

BACKGROUND: in its conclusions of 4 February 2011, **the Council therefore invited Member States to inform from 1 January 2012 the Commission of all their new and existing bilateral energy agreements with third countries.** The aim is to facilitate coordination at Union level and Member States' activities with a view to ensuring consistency and coherence in the EU's external energy relations with key producer, transit, and consumer countries.

Negotiations with powerful energy suppliers in third countries typically demand political support in the form of the conclusion of intergovernmental agreements between Member States and third countries.

Following the liberalisation of the electricity and gas markets in the European Union, in particular with the implementation of the Third Energy Package, the Member States have introduced significant changes in their energy legislation.

Facing a possible supply shortage, Member States are under increasing pressure to accept regulatory concessions in their intergovernmental agreements with third countries which are incompatible with Union energy law. **Such regulatory concessions threaten the operation and proper functioning of the Union internal market for energy**.

As was demonstrated during the gas dispute between the Russian Federation and Ukraine in January 2009, when the internal market is not functioning properly, the EU is more vulnerable to security of supply risks. Therefore it is important that the Member States and the Commission are aware of the amount and sources of energy imported.

To address these problems, it is important to **improve the exchange of information** between Member States and between Member States and the Commission on existing, provisionally applied and future intergovernmental agreements.

IMPACT ASSESSMENT: the Commission has not considered it necessary to carry out a formal impact assessment. The Commission nevertheless evaluated a number of options to achieve the proper transposition of the European Council conclusions. A public consultation on the external dimension of the EU energy policy took place between 21 December 2010 and 7 March 2011. In total, over 90 replies were received. The responses received highlighted the important role of the Union in promoting a **reliable legal and institutional framework** in order to achieve mutually advantageous relations with its main energy suppliers and transit countries.

LEGAL BASIS: Article 194 of the Treaty on the Functioning of the European Union.

CONTENT: the aim of this proposal is to transform the 4 February 2011 European Council conclusions into a **mechanism with detailed procedures for the exchange of information between Member States and the Commission** with regard to intergovernmental agreements in order to facilitate coordination at Union level to ensure security of supply, the proper operation and functioning of the Union internal energy market and create legal certainty for investment decisions.

As the proposed exchange of information will **increase the Member States' negotiating position vis-à-vis third countries**, it will ensure the proper implementation of the Union rules and policies.

Thus:

- it will allow taking the perspective of the collective **security of supply** situation in the EU, instead of a national perspective;
- the use of commonly developed **standard clauses** and the proposed compatibility check will furthermore provide investors with increased legal certainty as regards the likely compatibility of the intergovernmental agreement with EU legislation.

Scope: Intergovernmental agreements are defined as all **legally binding agreements** between Member States and third countries which are likely to have an impact on the operation or the functioning of the internal market for energy or on the security of energy supply in the EU. To avoid duplication, intergovernmental agreements for which a specific notification to the Commission is already foreseen in other acts of Union legislation are excluded from the proposal, except intergovernmental agreements which must be submitted to the Commission according to the Security of Gas Supply Regulation.10 It is also proposed that the new mechanism shall not concern agreements between commercial operators except and only as far as the intergovernmental agreement explicitly refers to these commercial agreements.

Exchange of information between Commission and Member States: Member States shall submit all **existing and provisionally applied intergovernmental agreements** between them and third countries in their entirety, including their annexes and other texts they refer to explicitly and all amendments thereto to the Commission at the latest three months after the entry into force of this Decision. When a Member State intends to enter into negotiations with a third country in order to amend an existing intergovernmental agreement or to conclude a new intergovernmental agreement, the Member State shall inform the Commission in writing of its intention at the earliest possible moment before the envisaged opening of the negotiations.

- **Once the intergovernmental agreement is ratified, the ratified text shall be sent to the Commission**. Intergovernmental agreements shall be submitted in their entirety, including their annexes, other texts they refer to and all amendments thereto.
- The Commission will make all information received available to the Member States **via a database**.
- When providing information to the Commission, a Member State may indicate whether any part of the information in the agreements submitted is to be regarded as **confidential**.

Assistance from the Commission: the Commission shall also be informed as early as possible of their intention to open negotiations on future intergovernmental agreements or to amend existing intergovernmental agreements. The Commission shall be regularly informed on the negotiations. On request, the Commission shall participate as an observer to the negotiations. In this context, Member States also have the right to ask the Commission for assistance during their negotiations with third countries.

Ex-ante compatibility control: the Commission may on its own initiative **until four weeks after it has been informed** of the closure of the negotiations at the latest or on request from the Member State which

has negotiated the intergovernmental agreement, assess the compatibility of the negotiated agreement with Union law before the agreement has been signed. The Commission has an assessment period of four months. If such compatibility check has been requested, in the absence of an opinion of the Commission within this examination period, the Commission is deemed not to have raised any objections.

Coordination: the Commission shall facilitate the coordination among Member States with a view to reviewing developments in relation to intergovernmental agreements, identifying common problems and solutions, and developing standard clauses that Member States can use in future intergovernmental agreements.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Union budget.