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

2011/0238(COD) - 25/10/2012 - Final act

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

LEGISLATIVE ACT: Decision No 994/2012/EU of the European Parliament and of the Council establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy.

CONTENT: following agreement at first reading, the Council and the European Parliament adopted this Decision establishing a mechanism for the exchange of information between Member States and the Commission on intergovernmental agreements in the field of energy, in order to optimise the functioning of the internal energy market.

Formulated as a response to the request by the European Council of 4 February 2011, this new mechanism is a **big step forward in terms of the transparency and coordination of the external energy relations of the EU and its Member States**. The mechanism will cover intergovernmental agreements that have an impact on the operation or functioning of the internal energy market or on the security of energy supply.

Exchange of information between Member States and the Commission: by 17 February 2013, Member States will submit to the Commission all existing intergovernmental agreements, including annexes and amendments to those agreements. Where following its first assessment, the Commission has doubts as to the compatibility with Union law of agreements submitted to it, in particular with Union competition law and internal energy market legislation, it shall inform the Member States concerned accordingly within nine months of the submission of those agreements.

With regard to **existing intergovernmental agreements which have already been communicated to the Commission** in accordance with Regulation (EU) No 994/2010 at the date of entry into force of the Decision, by 17 February 2013 Member States shall inform the Commission **whether any part of such intergovernmental agreements is to be regarded as confidential** and whether the information provided may be shared with other Member States.

Sharing information with other Member States: if a Member State considers an intergovernmental agreement to be confidential, it should provide the Commission with a summary of it for the purposes of sharing that summary with the other Member States. That summary shall contain at least the following information regarding the agreement or amendment in question: (i) the subject matter; (ii) the aim and the scope; (iii) the duration; (iv) the contracting parties; (v) information on the main elements.

The Commission shall make the summaries accessible in **electronic form** to all other Member States.

Assistance from the Commission: before or during negotiations with a third country on an intergovernmental agreement or on the amendment of an existing intergovernmental agreement, a Member State may inform the Commission in writing of the objectives of, and the provisions to be addressed in, the negotiations and may communicate any other relevant information to the Commission. Where a Member State gives the Commission notice of negotiations, that Member State may request the

assistance of the Commission in those negotiations, and the Commission may participate in the negotiations as an observer and provide the Member State concerned with advice on how to avoid incompatibility of the

Member States may keep the Commission informed during the negotiations, whilst indicating whether this information may be shared with all other Member States.

Compatibility assessment: where a Member State is negotiating an intergovernmental agreement or an amendment to an existing intergovernmental agreement and it has been unable, on the basis of its own assessment, to reach a firm conclusion as to the compati-bility of the intergovernmental agreement or amendment under negotiation with Union law, it shall inform the Commission before the closure of the negotiations and submit the draft agreement or amendment together with any annexes to it. The Commission shall, **within four weeks**, inform the Member State concerned of any doubts it may have as to the compatibility of the draft intergovernmental agreement with Union law. It shall inform the Member State concerned of its opinion on the compatibility with Union law of the draft agreement or amendment concerned within **10 weeks of the date of receipt** (the examination period). These time limits may be shortened in agreement with the Commission if circumstances so warrant.

Confidentiality: the Commission must respect requests from Member States to treat information submitted to it as confidential. Requests for confidentiality will not, however, restrict access of the Commission itself to confidential information, as the Commission needs to have comprehensive information for its own assessments. The Commission shall ensure that access to the confidential information is strictly limited to the Commission services for which it is absolutely necessary to have the information available. Requests for confidentiality are without prejudice to the right of access to documents as provided for in Regulation (EC) No 1049/2001.

Report: by 1 January 2016, the Commission will present a report on the application of the Decision assessing, in particular, the extent to which the Decision promotes compliance of intergovernmental agreements with Union law and a high level of coordination between Member States with regard to intergovernmental agreements. It shall also assess:

- the impact that the Decision has on Member States' negotiations with third countries;

- whether the scope of the Decision and the procedures it lays down are appropriate.

After submission of the first report, the Commission shall report every three years to the European Parliament and the Council on the information received under the mechanism, having due regard to the confidentiality provisions of the Decision.

ENTRY INTO FORCE: 16/11/2012.