Member State/third country intergovernmental agreements in the field of energy: information exchange mechanism

2016/0031(COD) - 16/02/2016 - Legislative proposal

PURPOSE: to establish an information exchange mechanism with regard to intergovernmental agreements (IGAs) and non-binding instruments between Member States and third countries in the field of energy.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Decision 994/2012/EU established an information exchange mechanism with regard to intergovernmental agreements (IGAs) between Member States and third countries in the field of energy. The main feature of this mechanism is that the Commission carries out compliance checks of IGAs after a Member State and a third country have concluded such agreements.

Decision No 994/2012/EU was useful for receiving information on existing intergovernmental agreements and for identifying problems posed by them in terms of their compatibility with Union law. However, **it proved ineffective in terms of ensuring compliance of intergovernmental agreements with Union law**.

The European Council in its conclusions of 19 March 2015 also called for full compliance with EU law of all agreements related to the buying of gas from external suppliers, notably by reinforcing transparency of such agreements and compatibility with EU energy security provisions

The review of the current IGA Decision forms part of the deliverables of the Energy Union Strategy adopted in February 2015, which sets the overall context and governance structure for a renewed EU energy policy.

IMPACT ASSESSMENT: five policy options have been considered in the Impact Assessment: the option maintained was the one in which the Commission carries out **obligatory ex-ante assessments of IGAs**.

CONTENT: the proposal seeks to repeal and replace Decision No 994/2012/EU and aims to:

ensure the **compliance of IGAs with EU law** to ensure the proper functioning of the internal market and enhance the EU's energy security; and

enhance the **transparency of IGAs** in order to increase the cost effectiveness of the EU's energy supply and solidarity between Member States

The IGA Decision thus applies to all energy commodity related supply and infrastructure IGAs, in particular gas, oil and electricity. Only IGAs concerning matters within the purview of the Euratom Treaty are not covered. For these IGAs Article 103 of the Euratom Treaty provides for a specific ex-ante procedure. The scope of the IGA Decision excludes commercial contracts between commercial entities.

The revised Decision contains the following elements:

Notification obligations with regard to intergovernmental agreements: Member States should:

- inform the Commission of its intent to enter into negotiations with third country regarding conclusion of new intergovernmental agreements or amending existing ones;
- notify to Commission a draft intergovernmental agreement or amendment with all accompanying documents as soon as agreement has been reached in the negotiations by the parties.

Assessment by the Commission: the Commission should:

- perform ex-ante assessment of draft intergovernmental agreements or amendments and to inform Member State of possible doubts it may have as to the compatibility with Union law, in particular with internal energy market legislation and Union competition law within six week;
- inform Member State of its opinion on compatibility of intergovernmental agreement or amendment with Union law within 12 weeks of date of notification.

Member States shall not conclude proposed intergovernmental agreement or amendment until Commission informed Member State of any doubts and its opinion.

Obligation of Member State to submit to Commission existing and future non-binding instruments with all accompanying documents. The Commission may perform ex-post assessment of submitted non-binding instruments and inform Member State accordingly if it considers measures implementing the non-binding instrument could conflict with Union law.

The Commission should share documents it has received with other Member States in accordance with confidentiality provisions.