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

2016/0031(COD) - 18/10/2016 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Industry, Research and Energy adopted the report by Zdzisaw KRASNODBSKI (ECR, PL) on the proposal for a decision of the European Parliament and of the Council on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy and repealing Decision No 994/2012/EU.

The committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Subject matter and scope: Members stated that the proposed decision should ensure the correct functioning of the internal energy market and ensure security of supply to the Union and to help achieve the goals of the Energy Union Strategy.

Intergovernmental agreement: the definition should cover any legally binding agreement, regardless of its formal designation having a potential impact on the operation or the functioning of the internal energy market or on the security of energy supply in the Union and which may concern the **purchase, trade, sale, transit, storage or supply of energy** in or to at least one Member State, or the construction or operation of energy infrastructure with a physical connection to at least one Member State.

Notice of negotiations: once the Member State has given the Commission such notice of negotiations, the Member State concerned shall keep the Commission **regularly informed of the progress of the negotiations**. The information provided to the Commission shall include indications of the provisions to be addressed in the negotiations, the objectives of the negotiations and other relevant information in accordance with confidentiality provisions.

The Commission shall make the information received, with the exception of confidential parts identified and any note regarding the incompatibility with Union law accessible to all Member States in order to ensure that the objectives of the Energy Union are achieved.

The obligation to notify to the **Commission shall not apply in respect of agreements that are concluded solely between undertakings**. However, subject to fully respecting commercially sensitive information Member States should be obliged to communicate to the Commission agreements that are concluded solely between undertakings where they are referred to explicitly in intergovernmental agreements or non-binding instrument.

Assistance from the Commission: during the negotiations of an intergovernmental agreement, the Commission should develop, together with Member States, **optional model clauses or guidelines** in order to avoid incompatibility of intergovernmental agreements with Union's energy security objectives.

Where the Commission considers it to be necessary in view of the functioning of the internal energy market or the security of energy supply in the Union, it shall **participate in the negotiations as an observer without limiting Member States' freedom of negotiations**. A Member State concerned may also request the assistance of the Commission in the negotiations

Commission representatives shall **handle sensitive information** received during the negotiations with **due confidentiality**

Commission's assessment: where the Commission finds an intergovernmental agreement or amendment to be incompatible with Union law, it shall provide the Member State with a **detailed opinion**. Before signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall demonstrate **how the Commission's opinion has been addressed** in order to ensure full compliance with Union law. The Commission shall inform the Member State concerned of its doubts that the measures implementing the **non-binding instrument** could conflict with Union law or the objectives of the Energy Union Strategy.

Before signing, ratifying or agreeing to a non-binding instrument or amendment, the Member State concerned shall demonstrate how the Commission's opinion has been addressed.

Transparency and confidentiality: the Commission shall make information which has not been identified as confidential accessible in secure electronic form to all other Member States as well as its summaries, together with the note regarding any incompatibility with Union law as well as its comments regarding the compliance with the Energy Union Strategy.

IT systems: by 1 year after the date of entry into force of this Decision, the Commission shall, on the basis of best practices and after consulting Member States, develop an aggregated information system which, while protecting the confidentiality of sensitive information, guarantees **increased transparency of the main elements of intergovernmental agreements** so as to establish an indicative benchmark which can be used by Member States in negotiations in order to prevent the abuse of dominant positions by third countries.