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

2016/0031(COD) - 02/03/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 542 votes to 87, with 19 abstentions, a legislative resolution 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 European Parliament's position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Subject-matter and scope: the amended text stipulated that the Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements in the field of energy, in order to ensure the functioning of the internal energy market and **enhance the security of energy supply** in the Union. Members stressed the importance of transparency and compliance with Union law to ensure the energy stability of the Union.

Intergovernmental Agreement: the definition covers any legally binding agreement, regardless of its formal designation, between one or more Member States and one or more third countries, or between one or more Member States and an international organisation, which concerns: (a) the purchase, trade, sale, transit, storage or supply of energy in or to at least one Member State; or (b) the construction or operation of energy infrastructure with a physical connection to at least one Member State.

Notification obligations: when a Member State intends to enter into negotiations with a third country or an international organisation in order to amend an intergovernmental agreement or to conclude a new intergovernmental agreement, the Member State concerned should keep the Commission **regularly informed of the progress of the negotiations**. The information provided to the Commission shall include an indication of the provisions to be addressed in the negotiations and the objectives of the negotiations in accordance with the provisions on confidentiality.

Where the ratified intergovernmental agreement refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain elements which 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.

Moreover, where a Member State negotiates an **intergovernmental agreement relating to electricity** and has been unable to reach a firm conclusion as to the compatibility with Union law, it shall **notify** to the Commission the draft agreement for ex-ante assessment, as soon as an agreement has been reached by the parties on all the main elements of that draft, but before the closure of formal negotiations.

Where a Member State is in doubt as to whether an agreement constitutes an intergovernmental agreement and thus whether it is to be notified, the Member State shall consult the Commission without delay.

Assistance from the Commission: the Commission services may provide it with advice on how to avoid incompatibility with Union law of the intergovernmental agreement. Such advice may include relevant **optional model clauses and guidance** that the Commission develops in consultation with Member States.

The Commission services may also draw the attention of the Member State concerned to the relevant Union energy policy objectives, including on the Energy Union. The Commission may **request to participate in the negotiations as an observer** where it considers this to be necessary. The Commission' s participation shall be subject to the written approval of the Member State concerned.

Assessment by the Commission: the Commission shall, within five weeks of the date of notification of the complete draft intergovernmental agreement or amendment, inform the Member State concerned of any doubts it may have as to the compatibility with Union law of the draft intergovernmental agreement or amendment.

Before signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall take utmost account of the Commission's opinion.

Notification with respect to non-binding instruments: in the interest of transparency, Member States shall submit to the Commission non-binding instruments which set out the conditions for energy supply, such as volumes and prices, or for the development of energy infrastructures.

If a non-binding instrument or an amendment refers explicitly to other texts, the Member State should also be able to submit those other texts.

Model clauses: by one year after the date of entry into force of this Decision, the Commission shall, on the basis of best practices and in consultation with Member States, develop optional model clauses and guidance, including a list of examples of clauses that do not respect Union law and should therefore not be used.