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

2016/0031(COD) - 05/04/2017 - Final act

PURPOSE: to address the shortcomings of the current mechanism for the exchange of information on international energy contracts.

LEGISLATIVE ACT: Decision (EU) 2017/684 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.

CONTENT: this 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. It repeals Decision No 994/2012/EU which has proved to be ineffective in terms of ensuring the compliance of intergovernmental agreements with Union law.

The European Parliament, in its resolution of 15 December 2015 entitled ‘Towards a European Energy Union’, stressed the need to enhance the coherence of the Union's external energy security policies and greater transparency in energy-related agreements.

The main elements of the Decision are the following:

- **Interinstitutional 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:
- 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.

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, it shall **inform the Commission in writing of its intention at the earliest possible moment before the envisaged opening of the negotiations**. It shall keep the Commission regularly informed of the progress of the negotiations.

Where that draft agreement or amendment refers explicitly to other texts, the respective Member State shall also submit those other texts in so far as they contain elements which concern the purchase, trade, sale, transit, storage or **supply of gas or oil** in or to at least one Member State or the construction or operation of gas or oil infrastructure with a physical connection to at least one Member State.

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

At the request of the Member State concerned, the Commission may participate in the negotiations as an observer.

Assessment by the Commission: the Commission shall:

- within 5 weeks of the date of notification of the complete draft intergovernmental agreement or amendment, including any annexes thereto, **inform the Member State concerned of any doubts** it may have as to the compatibility with Union law of the draft intergovernmental agreement;
- provide the Member State concerned with its **opinion** on the compatibility with Union law, in particular with internal energy market rules and Union competition law, of the draft intergovernmental agreement or amendment within 12 weeks of the date of notification.

The Member State **shall not agree** to the draft intergovernmental agreement or amendment until the Commission has informed the Member State of any doubts, or, where applicable, has issued its opinion.

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

Non-binding instruments: they may be subject to a notification, on a voluntary basis, **before or after** their adoption.

Coordination among Member States: the Commission shall review developments in relation to intergovernmental agreements and striving for consistency and coherence in the Union's external energy relations with producer, transit, and consumer countries.

By 3 May 2018, the Commission shall 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.

ENTRY INTO FORCE: 2.5.2017.