Basic information

2011/0238(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Decision	Procedure completed
Member States/third countries intergovernmental agreements in the field of energy: information exchange mechanism Repealed by 2016/0031(COD) **Subject** 3.60.10 Security of energy supply 3.60.15 Cooperation and agreements for energy 6.20.03 Bilateral economic and trade agreements and relations 6.40 Relations with third countries	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ITRE Industry, Research and Energy	KARIŅŠ Krišjānis (PPE)	26/10/2011
	Shadow rapporteur LANGE Bernd (S&D) CREUTZMANN Jürgen (ALDE) JADOT Yannick (Verts /ALE) SZYMAŃSKI Konrad (ECR)	

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	GIANNAKOU Marietta (PPE)	20/12/2011
INTA International Trade	JADOT Yannick (Verts /ALE)	11/10/2011

Council of the European Union

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	3188	2012-10-04

European Commission

Commission DG	Commissioner

	Energy	OETTINGER Günther
European Economic and Social Committee		
European Committee of the Regions		

Key events

Date	Event	Reference	Summary
07/09/2011	Legislative proposal published	COM(2011)0540	Summary
15/09/2011	Committee referral announced in Parliament, 1st reading		
19/06/2012	Vote in committee, 1st reading		
30/07/2012	Committee report tabled for plenary, 1st reading	A7-0264/2012	Summary
12/09/2012	Debate in Parliament		
13/09/2012	Decision by Parliament, 1st reading	T7-0343/2012	Summary
13/09/2012	Results of vote in Parliament		
04/10/2012	Act adopted by Council after Parliament's 1st reading		
25/10/2012	Final act signed		
25/10/2012	End of procedure in Parliament		
27/10/2012	Final act published in Official Journal		

Technical information

Procedure reference	2011/0238(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Repealed by 2016/0031(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 194-p3
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/7/06804

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE475.868	13/12/2011	

Amendments tabled in committee		PE480.533	19/01/2012	
Committee opinion	INTA	PE478.354	30/01/2012	
Committee opinion	AFET	PE478.667	07/02/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0264/2012	30/07/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0343/2012	13/09/2012	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00030/2012/LEX	25/10/2012	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0540	07/09/2011	Summary
Commission response to text adopted in plenary	SP(2012)665	11/10/2012	
Follow-up document	COM(2016)0054	16/02/2016	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	LU_CHAMBER	COM(2011)0540	11/11/2011	
Contribution	PT_PARLIAMENT	COM(2011)0540	24/11/2011	
Contribution	RO_CHAMBER	COM(2011)0540	24/11/2011	
Contribution	IT_SENATE	COM(2016)0054	22/04/2016	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0155/2012	18/01/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Decision 2012/0994
OJ L 299 27.10.2012, p. 0013

Summary

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

2011/0238(COD) - 30/07/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Industry, Research and Energy adopted the report by Krišjānis KARIŅŠ (PPE, LV) on the proposal for a directive of the European Parliament and of the Council setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy.

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

Transparency: the report states that a high degree of transparency with regard to agreements between Member States and third countries in the field of energy would be of benefit in achieving both closer intra-Union cooperation in the field of external energy relations and the Union's long-term policy objectives relating to energy, climate and security of energy supply.

Information exchange between the Member States and the Commission:

Where those existing intergovernmental agreements refer explicitly to other texts, **Member States shall also submit to the Commission those other texts** , insofar as they contain elements which have an impact on the functioning of the internal energy market or on the security of energy supply in the Union. However, that obligation does not apply in respect of agreements between commercial entities.

By three months after the entry into force of the Decision, 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. Where the Member State concerned has indicated that the information may be shared, the Commission shall make the information received accessible to all Member States in secure electronic form.

Where following its first assessment, the **Commission has doubts** as to the compatibility with Union law of agreements, in particular with Union competition law and internal energy market legislation, the Commission shall inform the Member States concerned accordingly within 9 months following the submission of those agreements.

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, the **Commission may provide it with advice** on how to avoid incompatibility of the intergovernmental agreement or of the amendment to an existing intergovernmental agreement under negotiation with Union law.

Confidentiality: when providing information to the Commission, a Member State may indicate whether any part of the information, be it commercial or other information the disclosure of which could harm the activities of the parties involved, is to be regarded as confidential and whether the information provided can be shared with other Member States. The Commission shall respect those indications. Requests for confidentiality under this Article shall not restrict access of the Commission itself to confidential information.

Assistance from the Commission: at the request of the Member State concerned, or at the request of the Commission and with the written approval of the Member State concerned, the Commission may participate in the negotiations as an **observer**. Where the Commission participates in the negotiations as an observer, it may provide the Member State concerned with advice on how to avoid incompatibility of the intergovernmental agreement or amendment under negotiation with Union law.

Compatibility assessment: where a Member State has been unable, on the basis of its own assessment, to reach a firm conclusion as to the compatibility of the intergovernmental agreement or amendment under negotiation with Union law, it shall inform the Commission thereof 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 from the date of receipt of the draft agreement or amendment, including annexes thereto, inform the Member State concerned of any doubts it may have as to the compatibility of the draft intergovernmental agreement or amendment with Union law. In the absence of a response from the Commission within that period, the Commission shall be deemed not to have any doubts.

Coordination among Member States: the Commission shall facilitate and encourage coordination among Member States with a view to reviewing 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.

Reporting and review: by 1 January 2016, the Commission shall submit a report on the application of this Decision.

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

2011/0238(COD) - 13/09/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 369 votes to 240 with 14 abstentions a legislative resolution on the proposal for a Directive of the European Parliament and of the Council setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy.

Parliament adopted its position on first reading following the ordinary legislative procedure. The amendments are the result of a compromise negotiated between Parliament and Council. The main amendments are as follows:

Transparency: the new text stresses that more transparency with regard to future intergovernmental agreements that will be negotiated or that are being negotiated between Member States and third countries in the field of energy could contribute to consistency in Member States' approaches to such agreements, to compliance with Union law and to the security of energy supply in the Union.

Sharing information on bilateral agreements: Member States shall submit to the Commission at the latest three months after the entry into force of the Decision all existing intergovernmental agreements between them and third countries.

The Commission will then have nine months in which to inform the Member States concerned if its first assessment has led to doubts on the compatibility with Union law (EU competition law and internal energy market legislation).

Observer status for the Commission: the text states that Member States may notify the Commission of any new agreements, before or during negotiations. The Commission could then - at the request of the EU country concerned or on its own initiative, if the Member State agrees - take part in the negotiations as an observer and provide advice on how to avoid incompatibility of the intergovernmental agreement or amendment under negotiation with Union law.

Compatibility with EU law: where a Member State negotiating an agreement has been unable to reach a firm conclusion on the compatibility of the negotiated agreement with Union law, it must submit the agreement to the Commission, before closing negotiations, and the Commission will then have four weeks in which to inform the Member State of any possible doubts. In the absence of a response from the Commission within that period, the Commission shall be deemed not to have any doubts.

Upon **ratification** of an agreement, Member States would be required to submit it to the Commission.

Confidentiality: the text states that Member States shall inform the Commission whether any part of intergovernmental agreements is to be regarded as confidential and whether the information provided may be shared with other Member States.

Where the Member State concerned has indicated that the **information may be shared**, the Commission shall make the information received accessible to all Member States in **secure electronic form**, with the exception of those parts that are regarded as confidential by the Member State concerned.

Where a Member State instructs the Commission not to make an existing intergovernmental agreement, an amendment to an existing intergovernmental agreement or a new intergovernmental agreement accessible to other Member States, it shall make available a **summary of the information submitted**. 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; and (v) information on the main elements.

Requests for confidentiality will not restrict access of the Commission itself to confidential information. 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.

Reporting and review: by 1 January 2016, and every three years thereafter, the Commission shall submit a report on the application of the Decision, and assess:

- 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;
- the impact of the Decision on Member States' negotiations with third countries and whether the scope of this Decision and the procedures it lays down are appropriate.

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

2011/0238(COD) - 07/09/2011 - Legislative proposal

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

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

BACKGROUND: in its conclusions of 4 February 2011, **the Council therefore invited Member States to inform from 1 January 2012 the Commission of all their new and existing bilateral energy agreements with third countries.** The aim is to facilitate coordination at Union level and Member States' activities with a view to ensuring consistency and coherence in the EU's external energy relations with key producer, transit, and consumer countries.

Negotiations with powerful energy suppliers in third countries typically demand political support in the form of the conclusion of intergovernmental agreements between Member States and third countries.

Following the liberalisation of the electricity and gas markets in the European Union, in particular with the implementation of the Third Energy Package, the Member States have introduced significant changes in their energy legislation.

Facing a possible supply shortage, Member States are under increasing pressure to accept regulatory concessions in their intergovernmental agreements with third countries which are incompatible with Union energy law. **Such regulatory concessions threaten the operation and proper functioning of the Union internal market for energy**.

As was demonstrated during the gas dispute between the Russian Federation and Ukraine in January 2009, when the internal market is not functioning properly, the EU is more vulnerable to security of supply risks. Therefore it is important that the Member States and the Commission are aware of the amount and sources of energy imported.

To address these problems, it is important to **improve the exchange of information** between Member States and between Member States and the Commission on existing, provisionally applied and future intergovernmental agreements.

IMPACT ASSESSMENT: the Commission has not considered it necessary to carry out a formal impact assessment. The Commission nevertheless evaluated a number of options to achieve the proper transposition of the European Council conclusions. A public consultation on the external dimension of the EU energy policy took place between 21 December 2010 and 7 March 2011. In total, over 90 replies were received. The responses received highlighted the important role of the Union in promoting a **reliable legal and institutional framework** in order to achieve mutually advantageous relations with its main energy suppliers and transit countries.

LEGAL BASIS: Article 194 of the Treaty on the Functioning of the European Union.

CONTENT: the aim of this proposal is to transform the 4 February 2011 European Council conclusions into a **mechanism with detailed procedures for the exchange of information between Member States and the Commission** with regard to intergovernmental agreements in order to facilitate coordination at Union level to ensure security of supply, the proper operation and functioning of the Union internal energy market and create legal certainty for investment decisions.

As the proposed exchange of information will **increase the Member States' negotiating position vis-à-vis third countries**, it will ensure the proper implementation of the Union rules and policies.

Thus:

- it will allow taking the perspective of the collective **security of supply** situation in the EU, instead of a national perspective;
- the use of commonly developed **standard clauses** and the proposed compatibility check will furthermore provide investors with increased legal certainty as regards the likely compatibility of the intergovernmental agreement with EU legislation.

Scope: Intergovernmental agreements are defined as all **legally binding agreements** between Member States and third countries which are likely to have an impact on the operation or the functioning of the internal market for energy or on the security of energy supply in the EU. To avoid duplication, intergovernmental agreements for which a specific notification to the Commission is already foreseen in other acts of Union legislation are excluded from the proposal, except intergovernmental agreements which must be submitted to the Commission according to the Security of Gas Supply Regulation.10 It is also proposed that the new mechanism shall not concern agreements between commercial operators except and only as far as the intergovernmental agreement explicitly refers to these commercial agreements.

Exchange of information between Commission and Member States: Member States shall submit all **existing and provisionally applied intergovernmental agreements** between them and third countries in their entirety, including their annexes and other texts they refer to explicitly and all amendments thereto to the Commission at the latest three months after the entry into force of this Decision. When a Member State intends to enter into negotiations with a third country in order to amend an existing intergovernmental agreement or to conclude a new intergovernmental agreement, the Member State shall inform the Commission in writing of its intention at the earliest possible moment before the envisaged opening of the negotiations.

- **Once the intergovernmental agreement is ratified, the ratified text shall be sent to the Commission**. Intergovernmental agreements shall be submitted in their entirety, including their annexes, other texts they refer to and all amendments thereto.
- The Commission will make all information received available to the Member States **via a database**.
- When providing information to the Commission, a Member State may indicate whether any part of the information in the agreements submitted is to be regarded as **confidential**.

Assistance from the Commission: the Commission shall also be informed as early as possible of their intention to open negotiations on future intergovernmental agreements or to amend existing intergovernmental agreements. The Commission shall be regularly informed on the negotiations. On request, the Commission shall participate as an observer to the negotiations. In this context, Member States also have the right to ask the Commission for assistance during their negotiations with third countries.

Ex-ante compatibility control: the Commission may on its own initiative **until four weeks after it has been informed** of the closure of the negotiations at the latest or on request from the Member State which has negotiated the intergovernmental agreement, assess the compatibility of the negotiated

agreement with Union law before the agreement has been signed. The Commission has an assessment period of four months. If such compatibility check has been requested, in the absence of an opinion of the Commission within this examination period, the Commission is deemed not to have raised any objections.

Coordination: the Commission shall facilitate the coordination among Member States with a view to reviewing developments in relation to intergovernmental agreements, identifying common problems and solutions, and developing standard clauses that Member States can use in future intergovernmental agreements.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Union budget.

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.