Basic information

2016/0031(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Decision	Procedure completed
Member State/third country intergovernmental agreements in the field of energy: information exchange mechanism Repealing Decision No 994/2012/EU 2011/0238(COD) **Subject** 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	KRASNODĘBSKI Zdzisław (ECR)	25/02/2016
	Shadow rapporteur URUTCHEV Vladimir (PPE) BALČYTIS Zigmantas (S&D) MLINAR Angelika (ALDE) SYLIKIOTIS Neoklis (GUE/NGL) TARAND Indrek (Verts/ALE) BORRELLI David (EFDD) SCHAFFHAUSER Jean-Luc (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	KUKAN Eduard (PPE)	15/03/2016
INTA International Trade	BENDTSEN Bendt (PPE)	14/03/2016

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3527	2017-03-21

	Transport, Telecommunications and Energy	3472	2016-06-06

European Commission	**Commission DG**	**Commissioner**
	Energy	ARIAS CAÑETE Miguel

European Economic and Social Committee

European Committee of the Regions

Key events

Date	Event	Reference	Summary
16/02/2016	Legislative proposal published	COM(2016)0053	Summary
07/03/2016	Committee referral announced in Parliament, 1st reading		
06/06/2016	Debate in Council		
13/10/2016	Vote in committee, 1st reading		
13/10/2016	Committee decision to open interinstitutional negotiations with report adopted in committee		
18/10/2016	Committee report tabled for plenary, 1st reading	A8-0305/2016	Summary
26/01/2017	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	GEDA/A/(2017)000419 PE613.653	
01/03/2017	Debate in Parliament		
02/03/2017	Decision by Parliament, 1st reading	T8-0059/2017	Summary
02/03/2017	Results of vote in Parliament		
21/03/2017	Act adopted by Council after Parliament's 1st reading		
05/04/2017	Final act signed		
05/04/2017	End of procedure in Parliament		
12/04/2017	Final act published in Official Journal		

Technical information

Procedure reference	2016/0031(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Repealing Decision No 994/2012/EU 2011/0238(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 194-p2
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions

Stage reached in procedure	Procedure completed
Committee dossier	ITRE/8/05762

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE583.986	30/05/2016	
Amendments tabled in committee		PE585.613	01/07/2016	
Committee opinion	AFET	PE582.061	14/09/2016	
Committee opinion	INTA	PE583.920	27/09/2016	
Committee report tabled for plenary, 1st reading/single reading		A8-0305/2016	18/10/2016	Summary
Text agreed during interinstitutional negotiations		PE613.653	23/01/2017	
Text adopted by Parliament, 1st reading/single reading		T8-0059/2017	02/03/2017	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2017)000419	13/01/2017	
Draft final act	00003/2017/LEX	05/04/2017	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2016)0053	16/02/2016	Summary
Document attached to the procedure	SWD(2016)0027	16/02/2016	
Document attached to the procedure	SWD(2016)0028	16/02/2016	
Commission response to text adopted in plenary	SP(2017)309	16/05/2017	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Reasoned opinion	AT_BUNDESRAT	PE580.750	14/04/2016	
Contribution	CZ_CHAMBER	COM(2016)0053	21/04/2016	
Contribution	ES_PARLIAMENT	COM(2016)0053	25/04/2016	
Contribution	IT_SENATE	COM(2016)0053	27/04/2016	

Contribution	RO_SENATE	COM(2016)0053	27/04/2016	
Contribution	CZ_SENATE	COM(2016)0053	09/06/2016	
Reasoned opinion	PT_PARLIAMENT	PE584.132	09/06/2016	
Reasoned opinion	MT_PARLIAMENT	PE584.133	13/06/2016	
Reasoned opinion	FR_SENATE	PE584.204	15/06/2016	
Contribution	DE_BUNDESTAG	COM(2016)0053	29/07/2016	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Decision 2017/0684
OJ L 099 12.04.2017, p. 0001 Summary

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 Zdzisław KRASNODĘBSKI (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.

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;
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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.

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.

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.