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Committee on Industry, Research and Energy

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DRAFT REPORT

on the proposal for a decision 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

(COM(2011)0540 – C7-0235/2011 – 2011/0238(COD))

Committee on Industry, Research and Energy

Rapporteur: Krišjānis Kariņš

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a decision 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 (COM(2011)0540 – C7-0235/2011 – 2011/0238(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0540),
 - having regard to Article 294(2) and Article 194 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0235/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee,¹
 - having regard to the opinion of the Committee of the Regions,²
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Foreign Affairs and the Committee on International Trade (A7-0000/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1 **Proposal for a decision** **Recital 3**

Text proposed by the Commission

(3) The proper functioning of the internal energy market requires that the energy imported into the Union from third

Amendment

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¹ OJ C, p...

² OJ C, p...

countries, is fully governed by the rules establishing an internal energy market. An internal energy market that is not functioning properly puts the EU in a vulnerable position with regard to security of energy supply. A high degree of transparency with regard to agreements between Member States and third countries in the field of energy would allow the Union to take coordinated action, in a spirit of solidarity, in order to ensure that such agreements are in accordance with Union legislation and effectively secure the supply of energy.

countries, is fully governed by the rules establishing an internal energy market. An internal energy market that is not functioning properly puts the EU in a vulnerable *and disadvantageous* position with regard to security of energy supply. A high degree of transparency with regard to agreements between Member States and third countries in the field of energy would allow the Union to take coordinated action, in a spirit of solidarity, in order to ensure that such agreements are in accordance with Union legislation and effectively secure the supply of energy.

Or. en

Amendment 2
Proposal for a decision
Recital 4

Text proposed by the Commission

(4) The new information exchange mechanism should only cover intergovernmental agreements which *are likely to* have an impact on the internal market for energy or on the security of energy supply as these two issues are intrinsically linked. It should comprise in particular all intergovernmental agreements which have an impact on the supply of gas, oil or electricity through fixed infrastructure or which have an impact on the amount of energy imported into the Union from third countries.

Amendment

(4) The new information exchange mechanism should only cover intergovernmental agreements which have an impact on the internal market for energy or on the security of energy supply as these two issues are intrinsically linked. It should comprise in particular all intergovernmental agreements which have an impact on the supply of gas, oil or electricity through fixed infrastructure or which have an impact on the amount of energy imported into the Union from third countries.

Or. en

Amendment 3
Proposal for a decision
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) In the light of primacy of Union law and the principle of sincere cooperation between the Member States and the Union enshrined in Article 4(3) of the Treaty on European Union and taking account of Article 351 of the Treaty of the Functioning of the European Union the Commission should assess the compatibility of existing intergovernmental agreements not yet notified with Union law. In the event of incompatibility, Member States should take all necessary steps to find a proportionate solution to eliminate the incompatibility identified.

Or. en

Justification

The primacy of EU law and the principle of sincere cooperation between Member States and the Union impose to assess, and, if necessary, to establish compatibility between intergovernmental agreements, which affect areas of shared competences between the Union and Member States. This ensures long-term legal certainty for commercial agreements and investor decisions built on existing IGA.

Amendment 4
Proposal for a decision
Recital 10

Text proposed by the Commission

Amendment

(10) The Commission should, on its own initiative or on request from the Member State which has negotiated the intergovernmental agreement, have the right to assess the compatibility of the negotiated agreement with Union law before the agreement has been signed.

(10) The Commission should, on its own initiative or on request from the Member State which has negotiated the intergovernmental agreement, have the right to assess the compatibility of the negotiated agreement with Union law before the agreement has been signed.
Where the assessment identifies incompatibility with Union law, the Commission should issue an opinion specifying the identified incompatibility and making recommendations to

eliminate it. Member States should take due account of such recommendations and renegotiate the agreement, if necessary. If the Commission considers that the recommendations have not been duly taken into account and doubts about the compatibility of the intergovernmental agreement with Union law persist, the Commission should launch infringement proceedings.

Or. en

Justification

The current proposal lacks a clear indication, how to react in case the ex-ante assessment identifies incompatibilities' with Union law. In order to enhance legal certainty and provide for a clear regularly framework, the Commission should provide support on how to remedy the situation and Member States should take account of the Commission's opinion.

Amendment 5
Proposal for a decision
Recital 13

Text proposed by the Commission

(13) A permanent exchange of information on intergovernmental agreements at Union level should allow to develop best practices. On the basis of those best practices the Commission should recommend standard clauses for the use in intergovernmental agreements between Member States and third countries. The use of these non-binding standard clauses should exclude conflicts of intergovernmental agreements with Union law.

Amendment

(13) A permanent exchange of information on intergovernmental agreements at Union level should allow to develop best practices. On the basis of those best practices the Commission should recommend **non-binding** standard clauses for the use in intergovernmental agreements between Member States and third countries. The use of these non-binding standard clauses should exclude conflicts of intergovernmental agreements with Union law.

Or. en

Justification

It is up to the Member States whether they take in to account the recommendation of the Commission. Nevertheless the parties involved in to the intergovernmental agreement and companies should be aware of the consequences.

Amendment 6
Proposal for a decision
Recital 14

Text proposed by the Commission

(14) The improved mutual knowledge of existing and new intergovernmental agreements should allow for a better co-ordination in energy matters between the Member States themselves and between the Member States and the Commission. Such improved co-ordination should enable Member States to fully benefit from the political and economic weight of the Union.

Amendment

(14) The improved mutual knowledge of existing and new intergovernmental agreements should allow for a better co-ordination in energy matters between the Member States themselves and between the Member States and the Commission. Such improved co-ordination should enable Member States to fully benefit from the political and economic weight of the Union ***and allow the Commission to propose solutions for problems identified in the intergovernmental agreement.***

Or. en

Justification

The Commission will have the most complete picture of situation regarding intergovernmental agreements in the field of energy. So it should be able to propose solutions to the problems identified which take in to account the widest possible set of circumstances.

Amendment 7
Proposal for a decision
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The Commission should assess whether this Decision is sufficient and effective not later than four years after its entry into force, in order to ensure full compliance of intergovernmental agreements with Union law and a high level of coordination between Member States with regard to intergovernmental agreements. If this assessment discovers any deficiencies in the regulatory framework, the Commission should present a legislative proposal to address the deficiency.

Justification

The proposal does not stipulate, what should be done, when the assessment comes to the conclusion that the instrument did not achieve its objective. The Commission should be given a clear mandate and an obligation to remedy the situation and take the appropriate legal action by reviewing the Decision or by proposing a complementary instrument.

Amendment 8
Proposal for a decision
Article 1 – paragraph 1

Text proposed by the Commission

1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements.

Amendment

1. 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.***

Justification

For the sake of clarity it should be specified what kind of agreements fall under the scope of this Decision.

Amendment 9
Proposal for a decision
Article 1 – paragraph 2

Text proposed by the Commission

2. Intergovernmental agreements which are already in their entirety subject to other specific notification procedures under Union law, except for intergovernmental agreements which shall be ***submitted*** to the Commission in accordance with Article 13(6) of Regulation (EU) No 994/2010, ***shall not be covered by this Decision.***

Amendment

2. ***This Decision shall not apply to*** intergovernmental agreements which are already in their entirety subject to other specific notification procedures under Union law, except for intergovernmental agreements which shall be ***communicated*** to the Commission in accordance with Article 13(6) of Regulation (EU) No 994/2010.

Amendment 10
Proposal for a decision
Article 2 – point 1

Text proposed by the Commission

(1) ‘intergovernmental agreements’ means any 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 Union;

Amendment

(1) ‘intergovernmental agreements’ means any legally binding agreements between Member States and third countries which have an impact on the operation or the functioning of the internal market for energy or on the security of energy supply in the Union;

Or. en

Amendment 11
Proposal for a decision
Article 3 – paragraph 1

Text proposed by the Commission

1. 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. The Commission shall make the received documents accessible in electronic form to all other Member States. ***Existing or provisionally applied intergovernmental agreements which have already been communicated in accordance with Regulation (EU) No 994/2010 to the Commission at the date of entry into force of this Decision, which are fulfilling the requirements of this paragraph, shall be considered as communicated for the purposes of this Decision.***

Amendment

1. 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. ***Within 6 months following the submission of the intergovernmental agreements in their entirety, including their annexes and other texts they refer to explicitly and all amendments thereto, the Commission shall assess their compatibility with Union law, in particular with EU competition law and internal energy market legislation. Where the submitted intergovernmental agreement is not compatible with Union law, the Member State shall take all appropriate steps to eliminate the incompatibility identified.*** The

Commission shall make the received documents accessible in electronic form to all other Member States **but shall not disclose information that is indicated as confidential by the respective Member State.**

Or. en

Justification

The primacy of the EU law and the principle of sincere cooperation between Member States and the Union impose to assess, and, if necessary, to establish compatibility between intergovernmental agreements, which affect areas of shared competences between the Union and the Member States. This ensures long-term legal certainty for commercial agreements and investor decisions built on existing IGA.

Amendment 12 **Proposal for a decision** **Article 3 – paragraph 2**

Text proposed by the Commission

2. 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. The information provided to the Commission shall include the relevant documentation, an indication of the provisions to be addressed in the negotiations, the objectives of the negotiations and other relevant information. In case of amendments to an existing agreement, the provisions that are to be renegotiated shall be indicated in the information provided to the Commission. ***The Commission shall make the received information accessible to all Member States in electronic form.*** The Member State concerned shall keep the Commission informed regularly of the ongoing negotiations. ***On request of the***

Amendment

2. 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 ***and at the latest 3 months*** before the envisaged opening of the negotiations. The information provided to the Commission shall include the relevant documentation, an indication of the provisions to be addressed in the negotiations, the objectives of the negotiations and other relevant information. In case of amendments to an existing agreement, the provisions that are to be renegotiated shall be indicated in the information provided to the Commission. The Member State concerned shall keep the Commission informed regularly of the ongoing negotiations. ***If requested by the Commission or by the Member State***

Commission or the Member State concerned, the Commission *may* participate as an observer in the negotiations.

concerned, the Commission *shall* participate as an observer in the negotiations *and provide legal advice to the negotiating Member State on how to avoid incompatibility between the negotiated intergovernmental agreement and Union law.*

Or. en

Justification

In order to enhance legal clarity, the instrument should stipulate a precise deadline, which Member States should respect for informing the Commission on its intention to open negotiations. If there is a request by either a Member State or the Commission to take part as an observer, no discretion should be left to the Commission, whether to participate or not.

Amendment 13
Proposal for a decision
Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Existing or provisionally applied intergovernmental agreements which, at the date of entry into force of this Decision, have already been communicated in accordance with Regulation (EU) No 994/2010 to the Commission, and which fulfil the requirements of this Article, shall be considered as communicated for the purposes of this Decision. A notification submitted in accordance with this Decision should be considered as fulfilling the notification obligation set out in Article 13(6) of the Regulation (EU) No 994/2010.

Or. en

Justification

The Article 13(6)a of the Regulation No 994/2010 puts an obligation to report to the Commission on gas supply contracts already. To avoid double reporting it should be specified in this Decision that Member States fulfil the obligation set in the Regulation by submitting the intergovernmental agreements under this decision.

Amendment 14
Proposal for a decision
Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Assistance from the Commission

When a Member State informs the Commission pursuant to Article 3(2) of its intention to enter into negotiations in order to amend an existing intergovernmental agreement or to conclude a new intergovernmental agreement, the Member State may request the assistance of the Commission in the negotiations with the third country.

Or. en

Justification

The content of this Article is covered by Amendment No 12 already.

Amendment 15
Proposal for a decision
Article 5

Text proposed by the Commission

Amendment

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. In case the Commission or the Member State concerned ask for such an ex-ante assessment of the negotiated intergovernmental agreement with Union law, the negotiated but not yet signed draft intergovernmental agreement shall

1. As early as possible and not later than two weeks after closure of the negotiations the Member State concerned shall inform the Commission of the closure of the negotiations and shall submit the negotiated but not yet signed draft intergovernmental agreement, including its annexes and other texts it refers to explicitly, to the Commission for examination. The Commission shall, on its own initiative or at the request of the Member State that negotiated the intergovernmental agreement, inform that Member State, within two months after

be submitted to the Commission for examination. The Member State concerned shall refrain from signing the agreement for a period of **four** months following the submission of the *draft* intergovernmental agreement. *In agreement with the Member State concerned, the examination period might be prolonged. When a compatibility control has been requested,* in the absence of *an opinion by* the Commission within *the examination* period, the Commission shall be deemed not to have raised objections.

being informed of the closure of the negotiations, of any doubts on the compatibility of the negotiated agreement, *and its annexes and other texts it refers to explicitly,* with Union law, *in particular with EU competition law and EU internal energy market legislation.* The Member State concerned shall refrain from signing the agreement for a period of **two** months following the submission of the intergovernmental agreement. In the absence of *a response from* the Commission within *that* period, the Commission shall be deemed not to have raised objections. *The Member State shall postpone the signing of an intergovernmental agreement for another two months if it has received a response from the Commission that the negotiated but not yet signed agreement, is not compatible with Union law. Within those two months the Commission shall issue a legal opinion.*

2. Where the legal opinion identifies incompatibility between the negotiated agreement and Union law, the Commission shall specify that incompatibility and shall make recommendations on how to eliminate the incompatibility.

3. Member States shall take due account of the Commission's recommendations and, if necessary, renegotiate the agreement. If the recommendations are not taken into account and serious doubts persist about the compatibility of the signed intergovernmental agreement with Union law, the Commission shall consider launching infringement proceedings.

Or. en

Justification

A two-step mandatory ex-ante compatibility control can serve as an early warning for the Member States, which avoids complicate re-negotiating of the intergovernmental agreement. The consequences of each step of the control mechanism should be made explicit, meaning the

need for the Commission to suggest solutions, the obligation of the Member State to take account of the Commission's recommendation and, as the last resort, the launch of an infringement procedure.

Amendment 16
Proposal for a decision
Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) identify common problems in relation to intergovernmental agreements and to ***consider appropriate action to address*** these problems;

Amendment

(b) identify common problems in relation to intergovernmental agreements and to ***propose solutions for*** these problems;

Or. en

Justification

The Commission should propose solutions which it sees as necessary to remove problems which are identified in the intergovernmental agreements.

Amendment 17
Proposal for a decision
Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) on the basis of best practice, develop standard clauses the use of which would ensure full compliance of future intergovernmental agreements with Union energy legislation.

Amendment

(c) on the basis of best practice ***and in consultation with the Member States,*** develop ***non-binding*** standard clauses the use of which would ensure full compliance of future intergovernmental agreements with Union energy legislation.

Or. en

Amendment 18
Proposal for a decision
Article 7

Text proposed by the Commission

When providing information to the

Amendment

When providing information to the

Commission in accordance with Article 3, the Member State may indicate whether any part of the information, in particular commercial information, is to be regarded as confidential and whether the information provided can be shared with other Member States. The Commission shall respect these indications. Requests for confidentiality do not restrict access of the Commission itself to confidential information.

Commission in accordance with Article 3, the Member State may indicate whether any part of the information, ***disclosure of which could harm the business activities of the parties involved***, in particular commercial information, is to be regarded as confidential and whether the information provided can be shared with other Member States. The Commission shall respect these indications. Requests for confidentiality do not restrict access of the Commission itself to confidential information.

Or. en

Justification

The intergovernmental agreements in the field of energy from time to time can contain references to commercial contracts. To protect companies from information leakage regarding their business activities it should be further specified what kind of information can be indicated as confidential.

Amendment 19 **Proposal for a decision** **Article 8 – paragraph 2**

Text proposed by the Commission

2. The report shall in particular assess whether this Decision provides for a sufficient framework in order to ensure full compliance of intergovernmental agreements with Union law and a high level of coordination between Member States with regard to intergovernmental agreements.

Amendment

2. The report shall in particular assess whether this Decision provides for a sufficient ***and effective*** framework in order to ensure full compliance of intergovernmental agreements with Union law and a high level of coordination between Member States with regard to intergovernmental agreements. ***If this Decision does not ensure the full compatibility of intergovernmental agreements with Union law and a high level of coordination between Member States with regard to intergovernmental agreements, the Commission shall, not later than a year after submission of the report, present, if appropriate, a review or complementary legislative proposal.***

Or. en

Justification

The proposal does not stipulate, what should be done, when the assessment comes to the conclusion that the instrument did not achieve its objective. The Commission should be given a clear mandate and an obligation to remedy the situation and take the appropriate legal action by reviewing the Decision or by proposing a complementary instrument.

EXPLANATORY STATEMENT

Stable and secure energy supplies are important to foster a predictable economic environment for citizens and the industrial sector of the European Union. The best way to ensure the reliability of energy supplies is via a functioning internal energy market. The introduction of the third energy package has furthered the EU's efforts to free up the energy market. Many Member States have unbundled power generation from transmission, which has allowed the entry of new participants in the energy supply market. The third energy package has removed entrance barriers to the energy market and significantly increased its liquidity. Although the second and third energy packages still have to be fully implemented, the results in Member States where they have been introduced are encouraging. Nevertheless, external vulnerabilities remain. - the EU imports over 60% of its gas and over 80% of its oil. This import tendency is unfortunately increasing.

After the gas supply crisis in 2009, a lot has been done to improve security of energy supplies to the EU's energy market. The gas crisis uncovered vulnerabilities of the European Union's energy supply systems. The swift adoption of the Regulation No. 994/2010 has provided the Union with some tools to fight future gas supply disruptions. The gas crisis indicated bottlenecks and shortcomings of the EU's gas supply system, and the first steps to remove them have now been taken. Yet challenges remain to secure safe supplies at a competitive price for European costumers. Intergovernmental agreements in the field energy of the Members States with third countries are among these challenges.

As enshrined in the Treaty on European Union, the energy policy of the Union is to secure the functioning and security of the energy market. From time to time, Member States conclude contracts with third countries which might have an effect on the proper functioning of the internal energy market. Although in most cases energy supply contracts are concluded between commercial entities, there are some situations when assistance form a Member State in the form of an intergovernmental agreement (IGA) is requested. These cases mostly concern gas transmission infrastructure development for which large investment is needed. To assure third country suppliers of predictability and stability of the legal regime, an IGA is concluded. It cannot be excluded that sometimes the aim of the third country is to bind the MS to assure the commercial contract or to secure a monopolistic position in energy supplies via particular infrastructure.

To avoid a breach of internal market rules in the field of energy, enhanced cooperation between Member States is needed regarding IGA's in the field of energy. Information on these IGA's should be shared between the Member States, and the Commission needs to be aware of existing contracts and ongoing negotiations. The Commission can provide Member States with expertise and coordination of joint efforts to secure compliance of the IGA's with internal market rules. That is why it is necessary that IGA's with third countries which have an impact on the internal market for energy be submitted to the Commission for evaluation. To avoid double reporting to the Commission, it should be stressed that IGA's which have already been communicated in accordance with Regulation No. 994/2010 don't have to be reported again. The same should apply the other way around.

As experience shows, the Commission's involvement in negotiations with third parties can

have a positive effect on the outcome of the talks. That is why the right of participation of the Commission in the negotiations has to be broadened. The Commission's presence would help secure a result which is in line with internal market rules, thus providing clarity to companies that the specific contract is in line with EU legislation. Companies need to be ensured that the IGA doesn't breach EU law, and that it will not be subject to an infringement procedure, the result of which could be costly for the company involved. Greater involvement of the Commission should facilitate compliance with the EU's internal market rules and thus increase legal certainty for market participants.

It should be stressed that compliance with the recommendations issued by the Commission is up to the Member States. The aim of this legislation is to ensure greater transparency of the IGA's concluded by the Member States in the field of energy and to ensure that Member States are aware of the compliance or non-compliance of the agreement with the internal market rules. The Commission will have to prepare non-binding standard clauses which Member States will be encouraged to use. These clauses will ensure that the IGA doesn't breach EU law.

This legislation does not concern agreements between commercial entities, except if they are part of an IGA. The agreements between the countries under normal circumstances should not involve companies, but given the specific nature of the business area it can't be excluded that energy companies are part of an IGA. The proposal contains adequate guarantees for the companies that their day to day business will not be affected by this decision. Furthermore, to secure that commercial information is not passed on to the other Member States, it needs to be further specified what kind of information can be indicated as confidential. This should secure appropriate safeguards for companies.

Agreements which affect an area of shared competence between the Union and Member States have to be in line with Union law. The Member States are encouraged to take necessary steps to eliminate incompatibilities identified in the IGA's with third countries in the field of energy. This is a necessary step to secure the proper functioning and security of the internal energy market in Europe.