



2016/0031(COD)

26.9.2016

OPINION

of the Committee on International Trade

for the Committee on Industry, Research and Energy

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
(COM(2016)0053 – C8-0034/2016 – 2016/0031(COD))

Rapporteur: Bendt Bendtsen

PA_Legam

AMENDMENTS

The Committee on International Trade calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a decision Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The European Parliament, in its resolution of 15 December 2015 on Towards a European Energy Union, stressed the need to enhance the coherence of the Union's external energy security and greater transparency in energy-related agreements^{1a}.

^{1a} **Texts adopted P8_TA(2015)0444**

Amendment 2

Proposal for a decision Recital 7

Text proposed by the Commission

Amendment

(7) In order to ensure compliance with Union law, Member States should notify the draft intergovernmental agreement to the Commission before it becomes legally binding for the parties (ex-ante). In a spirit of cooperation, the Commission should support the Member State in identifying compliance issues of the draft intergovernmental agreement or amendment. The respective Member State would then be better prepared to conclude a Union law compliant agreement. The Commission should have sufficient time for such an assessment in order to provide

(7) In order to ensure compliance with Union law **and the objectives of the Energy Union Strategy**, Member States should notify the draft intergovernmental agreement to the Commission before it becomes legally binding for the parties (ex-ante). In a spirit of cooperation, the Commission should support the Member State in identifying compliance issues of the draft intergovernmental agreement or amendment. The respective Member State would then be better prepared to conclude a Union law compliant agreement. The Commission should have sufficient time

for as much legal certainty as possible while avoiding undue delays. In order to fully benefit from the Commission's support Member States should refrain from concluding an intergovernmental agreement until the Commission has informed the Member State of its assessment. The Member States should take all necessary steps to find a suitable solution to eliminate the incompatibility identified.

for such an assessment in order to provide for as much legal certainty as possible while avoiding undue delays ***which may jeopardise conclusion of the agreement.*** In order to fully benefit from the Commission's support Member States should refrain from concluding an intergovernmental agreement until the Commission has informed the Member State of its assessment ***within the time limits indicated.*** The Member States should take all necessary steps to find a suitable solution to eliminate the incompatibility identified.

Amendment 3

Proposal for a decision Recital 13

Text proposed by the Commission

(13) This Decision should not create obligations as regards agreements ***between*** undertakings. However, Member States should be free to communicate to the Commission, on a voluntary basis, such agreements that are referred to explicitly in intergovernmental agreements or non-binding instruments.

Amendment

(13) This Decision should not create obligations as regards agreements ***to which only*** undertakings ***are a party.*** However, Member States should be free to communicate to the Commission, on a voluntary basis, ***all*** such agreements that are referred to explicitly in intergovernmental agreements or non-binding instruments ***Moreover, Member States should communicate to the Commission agreements with third-country undertakings, where a third country is a major stakeholder, that are referred to explicitly in intergovernmental agreements or non-binding instruments.***

Amendment 4

Proposal for a decision Recital 14

Text proposed by the Commission

(14) The Commission should make information it receives available to all other Member States in secure electronic form. The Commission should respect requests from Member States to treat information submitted to it as confidential. Requests for confidentiality should, however, not restrict access of the Commission itself to confidential information, as the Commission needs to have comprehensive information for its own assessments. The Commission should be responsible for guaranteeing the application of the confidentiality clause. Requests for confidentiality should be without prejudice to the right of access to documents as provided for in Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹¹.

¹¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 299, 27.10.2012, p. 13).

Amendment

(14) The Commission should make information it receives available to all other Member States in secure electronic form. The Commission should respect requests from Member States to treat information submitted to it as confidential ***in order to maintain the level of confidentiality needed to safeguard the interests of the Member States during the negotiations with the other party.*** Requests for confidentiality should, however, not restrict access of the Commission itself to confidential information, as the Commission needs to have comprehensive information for its own assessments. The Commission should be responsible for guaranteeing the application of the confidentiality clause. Requests for confidentiality should be without prejudice to the right of access to documents as provided for in Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹¹.

¹¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 299, 27.10.2012, p. 13).

Amendment 5

Proposal for a decision

Recital 15

Text proposed by the Commission

(15) 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

Amendment

(15) If a Member State considers an intergovernmental agreement to be confidential, it should provide the Commission with a summary ***containing its main elements and relevant clauses,***

other Member States.

including restrictions, for the purposes of sharing that summary with the other Member States.

Amendment 6

Proposal for a decision Recital 16

Text proposed by the Commission

(16) A permanent exchange of information on intergovernmental agreements at Union level should enable best practices to be developed. On the basis of those best practices, the Commission, where appropriate in cooperation with the European External Action Service as regards the Union's external policies, should develop optional model clauses to be used in intergovernmental agreements between Member States and third countries. The use of such model clauses should aim to avoid conflicts of intergovernmental agreements with Union law, in particular internal energy market rules and competition law, and conflicts with international agreements concluded by the Union. Their use should be optional, and it should be possible to adapt their content to any particular circumstance.

Amendment

(16) A permanent exchange of information on intergovernmental agreements at Union level should enable best practices to be developed. On the basis of those best practices, the Commission, where appropriate in cooperation with the European External Action Service as regards the Union's external policies, should develop optional model ***positive and negative*** clauses to be used in intergovernmental agreements between Member States and third countries ***to assist in the legal definition of those agreements***. The use of such model clauses should aim to avoid conflicts of intergovernmental agreements with Union law, in particular internal energy market rules and competition law, and conflicts with international agreements concluded by the Union. Their use should be optional, and it should be possible to adapt their content to any particular circumstance.

Amendment 7

Proposal for a decision Recital 18

Text proposed by the Commission

(18) The Commission should facilitate and encourage coordination between Member States with a view to enhancing the overall strategic role of the Union

Amendment

(18) The Commission should facilitate and encourage coordination between Member States with a view to enhancing the overall strategic role of the Union

through a strong and effective coordinated approach to producer, transit, and consumer countries.

through a strong and effective coordinated approach to producer, transit, and consumer countries, *including with a view to ensuring consistency between the principles of Union energy policy and the common commercial policy.*

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 and non-binding instruments in the field of energy as defined in Article 2, in order to optimise the functioning of the internal energy market.

Amendment

1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements and non-binding instruments in the field of energy as defined in Article 2, in order to optimise the functioning of the internal energy market, *the Energy Union, and the coherence of the Union's external energy security policies.*

Amendment 9

Proposal for a decision Article 2 – point 1

Text proposed by the Commission

(1) ‘intergovernmental agreement’ means any legally binding agreement between one or more Member States and one or more third countries having an impact on the operation or the functioning of the internal energy market or on the security of energy supply in the Union; however, where such a legally binding agreement also covers other issues, only those provisions that relate to energy, including general provisions applicable to those energy-related provisions, are

Amendment

(1) ‘intergovernmental agreement’ means any legally binding agreement between one or more Member States and one or more third countries *or between one or more Member States and one or more third country undertakings in which a third-country is a major stakeholder,* having an impact on the operation or the functioning of the internal energy market or on the security of energy supply in the Union; however, where such a legally binding agreement also covers other issues,

deemed to constitute an ‘intergovernmental agreement’;

only those provisions that relate to energy, including general provisions applicable to those energy-related provisions, are deemed to constitute an ‘intergovernmental agreement’;

Amendment 10

Proposal for a decision Article 2 – point 3

Text proposed by the Commission

(3) ‘non-binding instrument’ means a legally non-binding arrangement between one or more Member States and one or more third countries, such as a memorandum of understanding, joint declaration, ministerial joint declaration, joint action or joint code of conduct, which contains interpretation of Union law, sets the conditions for energy supply (such as volumes and prices) or the development of energy infrastructures;

Amendment

(3) ‘non-binding instrument’ means a legally non-binding arrangement between one or more Member States and one or more third countries ***or regional organisations, and between one or more Member States and one or more undertakings in which a participating third-country is a major stakeholder or holds a decision-making power***, such as a memorandum of understanding, joint declaration, ministerial joint declaration, joint action or joint code of conduct, which contains interpretation of Union law, sets the conditions for energy supply (such as volumes and prices) or the development of energy infrastructures;

Amendment 11

Proposal for a decision Article 3 – paragraph 4

Text proposed by the Commission

4. The obligation to notify to the Commission according to paragraphs 2 and 3 does not apply in respect of agreements ***between*** undertakings.

Amendment

4. The obligation to notify to the Commission according to paragraphs 2 and 3 does not apply in respect of agreements ***to which only*** undertakings ***are a party***.

Amendment 12

Proposal for a decision

Article 5 – paragraph 3

Text proposed by the Commission

3. With the approval of the Member State concerned, the periods referred to in paragraphs 1 and 2 may be extended. The periods referred to in paragraphs 1 and 2 shall be shortened in agreement with the Commission if circumstances so warrant.

Amendment

3. With the approval of the Member State concerned, the periods referred to in paragraphs 1 and 2 may be extended. The periods referred to in paragraphs 1 and 2 shall be shortened in agreement with the Commission if circumstances so warrant, ***in order to ensure that the negotiations are concluded in due time.***

Amendment 13

Proposal for a decision

Article 5 – paragraph 4 – subparagraph 2

Text proposed by the Commission

When signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall ***take utmost account of*** the Commission's opinion referred to in paragraph 2.

Amendment

Before signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall ***demonstrate how objections expressed in*** the Commission's opinion referred to in paragraph 2 ***have been addressed in order to ensure compliance with Union law and with Energy Union objectives.***

Amendment 14

Proposal for a decision

Article 6 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The obligation to notify to the Commission according to this paragraph does not apply in respect of agreements ***between*** undertakings.

Amendment

The obligation to notify to the Commission according to this paragraph does not apply in respect of agreements ***to which only*** undertakings ***are a party.***

Amendment 15

Proposal for a decision Article 6 – paragraph 3

Text proposed by the Commission

3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2. Where, following its first assessment, the Commission has doubts as to the compatibility of those agreements with Union law, in particular with internal energy market legislation, **and** Union competition law ***in particular with internal energy market legislation and Union competition law***, the Commission shall inform the Member States concerned accordingly within nine months of the notification of those agreements.

Amendment

3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2. Where, following its first assessment, the Commission has doubts as to the compatibility of those agreements with Union law, in particular with internal energy market legislation, Union competition law ***and matters falling under Union competence in the context of the Common Commercial Policy***, the Commission shall inform the Member States concerned accordingly within nine months of the notification of those agreements.

Justification

The rapporteur considers that there should be put special emphasis also on the compliance with matters falling exclusive union competences under the Common Commercial policy.

Amendment 16

Proposal for a decision Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. ***Upon*** adopting a non-binding instrument or an amendment to a non-binding instrument, the Member State concerned shall notify the non-binding instrument or the amendment, including any annexes thereto, to the Commission.

Amendment

1. ***Before*** adopting a non-binding instrument or an amendment to a non-binding instrument, the Member State concerned shall notify the non-binding instrument or the amendment, including any annexes thereto, to the Commission.

Amendment 17

Proposal for a decision Article 7 – paragraph 3

Text proposed by the Commission

3. The obligation to notify to the Commission according to paragraphs 1 and 2 does not apply in respect of agreements *between* undertakings.

Amendment

3. The obligation to notify to the Commission according to paragraphs 1 and 2 does not apply in respect of agreements *to which only* undertakings *are a party*.

Amendment 18

Proposal for a decision Article 7 – paragraph 4

Text proposed by the Commission

4. Where, following its first assessment, the Commission considers that the measures implementing the non-binding instrument notified to it under paragraphs 1 and 2 could conflict with Union law, in particular with internal energy market legislation and Union competition law, the Commission may inform the Member State concerned accordingly.

Amendment

4. Where, following its first assessment, the Commission considers that the measures implementing the non-binding instrument notified to it under paragraphs 1 and 2 could conflict with Union law, in particular with internal energy market legislation and Union competition law, the Commission may inform the Member State concerned accordingly, *within six weeks after such notification. Within that period, Member States shall refrain from signing or otherwise concluding the non-binding instrument. The Commission's opinion shall not be binding, but the Member State may address the concerns of the Commission.*

Amendment 19

Proposal for a decision Article 8 – paragraph 3 – subparagraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) information regarding provisions falling within the Union's competence in the context of the Common Commercial Policy.

Justification

The rapporteur considers that there should be put special emphasis also on the compliance with matters falling under exclusive Union competencies under the Common Commercial Policy

Amendment 20

Proposal for a decision Article 9 – point b

Text proposed by the Commission

Amendment

(b) identifying common problems in relation to intergovernmental agreements and non-binding instruments and considering appropriate action to address those problems and, where appropriate, proposing solutions;

(b) identifying common problems in relation to intergovernmental agreements and non-binding instruments and considering appropriate action to address those problems and, where appropriate, proposing ***guidance and*** solutions;

PROCEDURE – COMMITTEE ASKED FOR OPINION

| | | | | | | | |
|---|--|----|----|----|---|----|---|
| Title | 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 | | | | | | |
| References | COM(2016)0053 – C8-0034/2016 – 2016/0031(COD) | | | | | | |
| Committee responsible Date announced in plenary | ITRE 7.3.2016 | | | | | | |
| Opinion by Date announced in plenary | INTA 7.3.2016 | | | | | | |
| Rapporteur Date appointed | Bendt Bendtsen 14.3.2016 | | | | | | |
| Discussed in committee | 13.7.2016 | | | | | | |
| Date adopted | 26.9.2016 | | | | | | |
| Result of final vote | <table> <tr> <td>+: </td><td>30</td></tr> <tr> <td>–: </td><td>1</td></tr> <tr> <td>0: </td><td>4</td></tr> </table> | +: | 30 | –: | 1 | 0: | 4 |
| +: | 30 | | | | | | |
| –: | 1 | | | | | | |
| 0: | 4 | | | | | | |
| Members present for the final vote | Laima Liucija Andrikienė, David Campbell Bannerman, Daniel Caspary, Marielle de Sarnez, Eleonora Forenza, Karoline Graswander-Hainz, Alexander Graf Lambsdorff, Bernd Lange, David Martin, Emmanuel Maurel, Emma McClarkin, Anne-Marie Mineur, Sorin Moisă, Alessia Maria Mosca, Franz Obermayr, Inmaculada Rodríguez-Piñero Fernández, Tokia Saïfi, Marietje Schaake, Helmut Scholz, Joachim Schuster, Joachim Starbatty, Iuliu Winkler, Jan Zahradil | | | | | | |
| Substitutes present for the final vote | Eric Andrieu, Reimer Böge, José Bové, Edouard Ferrand, Gabriel Mato, Frédérique Ries, Lola Sánchez Caldentey, Jarosław Wałęsa | | | | | | |
| Substitutes under Rule 200(2) present for the final vote | Werner Kuhn, Verónica Lope Fontagné, Francisco José Millán Mon, Cláudia Monteiro de Aguiar, Milan Zver | | | | | | |