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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 reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Luxembourg Chamber of Deputies, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 18 January 2012¹,
 - after consulting the Committee of the Regions,
 - having regard to the undertaking given by the Council representative by letter of 5 June 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - 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 (A7-0264/2012),
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.

AMENDMENTS BY PARLIAMENT*

to the Commission proposal

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

¹ OJ C 68, 6.3.2012, p. 65..

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■ .

² OJ C 68, 6.3.2012, p. 65.

After consulting the Committee of the Regions ,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

- (1) The European Council has asked Member States to inform *the Commission as* from 1 January 2012 ■ of all their new and existing bilateral agreements with third countries in the field of energy. The Commission should make this information available to all other Member States in an appropriate form, having regard to the need for protection of commercially sensitive information.
- (2) Article 4 of the Treaty on European Union ■ requires Member States to take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the Union institutions. Member States should therefore avoid or eliminate any incompatibility between Union law and international agreements concluded between Member States and third countries.

² *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...*

- (3) The proper functioning of the internal energy market requires that the energy imported into the Union **be** fully governed by the rules establishing the internal energy market. An internal energy market that does not function properly puts the **Union** in a vulnerable **and disadvantageous** position with regard to the security of energy supply, **and undermines its potential benefits to European consumers and industry**. 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 the spirit of solidarity, in order to ensure that such agreements **comply** with Union law and effectively secure energy supply. **Such transparency would also 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.**
- (4) A new information exchange mechanism should therefore be established. It should cover only intergovernmental agreements **having** an impact on the internal energy market or on the security of energy supply **in the Union** as these two issues are intrinsically linked. **The initial assessment as to whether an intergovernmental agreement, or another text to which an intergovernmental agreement refers explicitly, has an impact on the internal energy market or the security of energy supply in the Union should be the responsibility of Member States; in cases of doubt, a Member State should consult the Commission. In principle, agreements that are no longer in force or are no longer applied do not have an impact on the internal energy market or on the security of energy supply in the Union and should therefore not be covered by this information exchange mechanism. The information exchange mechanism** 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 **■** .
- (5) Intergovernmental agreements which **must** be notified in their entirety to the Commission on the basis of other Union acts should be excluded from the information exchange mechanism. However, that exemption should not apply to intergovernmental agreements with third countries which have an impact on the development and use of gas infrastructure and gas supplies and which must be communicated to the Commission in accordance with Article 13(6)(a) of Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply **■** ⁴. Such agreements should be notified according to the rules laid down in this Decision. To avoid duplication, a notification submitted in accordance with this Decision should be considered to fulfill the obligation set out in **Article 13(6)(a) of Regulation (EU) No 994/2010.**

⁴ OJ L 295, 12.11.2010, p. 1

- (6a) *Intergovernmental agreements concerning matters within the purview of the Treaty establishing the European Atomic Energy Community should not be covered by this Decision.*
- (7) This Decision *does not create obligations as regards* agreements between commercial entities █. *However, it does not prevent Member States from communicating to the Commission, on a voluntary basis, commercial agreements that are referred to explicitly in* intergovernmental agreements █. *Furthermore, as it is possible that commercial agreements contain regulatory provisions, commercial operators negotiating commercial agreements with operators from third countries should have the possibility to seek guidance from the Commission in order to avoid potential conflicts with Union law.*
- (8) Member States should submit to the Commission all existing █ *intergovernmental agreements, whether they have entered into force or are being applied* provisionally within the meaning of Article 25 of the Vienna Convention *on the Law of Treaties*, and *all* new intergovernmental agreements.
- (9) *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. Therefore, Member States should have the option of informing the Commission of negotiations* with regard to new intergovernmental agreements or amendments to existing intergovernmental agreements. *Where Member States choose that option, the Commission should be kept informed regularly of the progress of the negotiations. Member States should have the possibility to invite the Commission to participate in the negotiations as an observer.*

The Commission should also have the possibility to participate as an observer at its own request, subject to the approval of the Member State concerned. Member States should also have the possibility to request the Commission to assist them during their negotiations with third countries. In that case, the Commission should have the possibility to provide advice on how to avoid incompatibility with Union law, and to draw attention to the Union's energy policy objectives and the principle of solidarity between Member States.

- (9a) *The Commission should assess the compatibility of existing intergovernmental agreements with Union law. In the event of incompatibility, Member States should take all necessary steps to find a suitable solution to eliminate the incompatibility identified.*
- (10) *In order to ensure more transparency and to avoid potential conflicts with Union law, Member States should have the option of informing the Commission of a new intergovernmental agreement with a third country before or during the negotiations thereof. Where a Member State, which has negotiated an intergovernmental agreement, has informed the Commission before the closure of negotiations accordingly and has submitted the draft intergovernmental agreement to it, the Commission should have the possibility to inform that Member State of its opinion on the compatibility of the negotiated agreement with Union law. The Commission has the right to launch infringement proceedings in accordance with Article 258 of the Treaty on the Functioning of the European Union (TFEU), where it considers that a Member State has breached its obligations under the TFEU.*

- (11) All final, ratified *intergovernmental* agreements covered by this Decision should be transmitted to the Commission in order to enable all other Member States *to be informed*.
- (12) The Commission should make all 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 assessment. 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 Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹.
- (12a) *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 this summary with the other Member States.*

¹ OJ L 145, 31.5.2001, p. 43.

- (13) 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 (EEAS) 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 competition law and internal energy market rules, 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.*
- (13a) *Given the existence of the internal energy market and the objectives of the Union energy policy, Member States should take due account of those objectives when negotiating intergovernmental agreements in the field of energy that have an impact on the Union energy policy.*
- (14) The improved mutual knowledge of existing and new intergovernmental agreements should allow for better coordination in energy matters between the Member States and between the Member States and the Commission. Such improved coordination should enable Member States to benefit fully from the political and economic weight of the Union *and enable the Commission to propose solutions for problems identified in the area of intergovernmental agreements.*

(14a) 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.

(15) The information exchange mechanism, including assessments to be made by the Member States in implementing it, is without prejudice to the application of the Union rules on infringements, state aid and competition.

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(15a) The Commission should assess whether this Decision is sufficient and effective in ensuring compliance of intergovernmental agreements with Union law and a high level of coordination between Member States with regard to intergovernmental agreements in the field of energy.

(15b) Since the objective of this Decision, namely the exchange of information between Member States and the Commission with regard to intergovernmental agreements in the field of energy, cannot be sufficiently achieved by the Member States but can rather, by reason of the effects of this Decision, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve this objective,

HAVE ADOPTED THIS DECISION:

Article 1
Subject matter and scope

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 *as defined in Article 2, in order to optimise the functioning of the internal energy market.*
2. *This Decision shall not apply to intergovernmental* agreements which are already, in their entirety, subject to other specific notification procedures under Union law. ■

Notwithstanding the first subparagraph, this Decision shall apply to intergovernmental agreements which are to be *communicated* to the Commission pursuant to Article 13(6)(a) of Regulation (EU) No 994/ **2010**.

Article 2
Definitions

For the purposes of this Decision the following definitions apply:

- (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, shall constitute an "intergovernmental agreement";*

- (2) "existing intergovernmental **agreement**" means **an** intergovernmental **agreement** which entered into force **or is applied provisionally** prior to the entry into force of this Decision.

Article 3

Exchange of information between Member States and **the** Commission

1. By ...* Member States shall submit to the Commission **all existing intergovernmental agreements, including annexes and amendments to those agreements. 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.**

Existing intergovernmental agreements which have already been communicated **to the Commission** in accordance with **Article 13(6)(a) of Regulation (EU) No 994/2010** at the date of entry into force of this Decision shall be considered as **having been submitted** for the purposes of this paragraph, provided that that communication meets the requirements of the first subparagraph. **By ...* 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.**

* OJ: Please insert the date: three months after the entry into force of this Decision.

Where, pursuant to this paragraph, a Member State submits existing intergovernmental agreements also falling within the scope of Article 13(6)(a) of Regulation (EU) No 994/2010 to the Commission, it shall be considered having complied with the communication obligation set out in that Article.

- 1a.*** Where following its first assessment, the Commission has doubts as to the compatibility with Union law of agreements submitted to it under paragraph 1, 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.
- 2.*** ***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 the Member State gives the Commission such notice of negotiations, ***the*** Member State concerned shall keep the Commission regularly informed of the progress of the negotiations.

The Member State concerned ***shall indicate to the Commission whether information submitted under the first subparagraph may be shared with all 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 any confidential parts identified in accordance with Article 3a.***

- 2a.*** ***Where a Member State gives the Commission notice of negotiations as provided for in paragraph 2, 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.***

3. Upon ratification of an intergovernmental agreement or of an amendment to an intergovernmental agreement, the Member State concerned shall submit the intergovernmental agreement or the amendment, including any annexes to the agreement or the amendment, *to the Commission*.

Where the intergovernmental agreement or the amendment to the intergovernmental agreement refers explicitly to other texts, Member States shall also submit 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.

4. *Without prejudice to paragraph 5 of this Article and Article 3a, the Commission shall make the documents which it has received under paragraphs 1 and 3 accessible in secure electronic form to all other Member States.*

5. *Where a Member State instructs the Commission, in accordance with Article 3a, 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:*

- (a) the subject matter;*
- (b) the aim and the scope;*
- (c) the duration;*
- (d) the contracting parties; and*
- (e) information on the main elements.*

The Commission shall make the summaries accessible in electronic form to all other Member States.

Article 3a Confidentiality

1. *When providing information to the Commission in accordance with Article 3(1) to (4), 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.*
2. *Requests for confidentiality under this Article shall 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.*

Article 4
Assistance from the Commission

Where a Member State gives the Commission notice of negotiations pursuant to Article 3(2), *that* Member State may request the assistance of the Commission in *those* negotiations **■** .

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.

Article 5
Compatibility assessment

- 1. 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 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.*
- 2. 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.*

3. *Where the Commission informs the Member State concerned pursuant to paragraph 2 that it has doubts, it shall inform the Member State concerned of its opinion on the compatibility of the draft agreement or amendment concerned with Union law within 10 weeks from the date of receipt referred to in paragraph 2 (the examination period). With the approval of the Member State concerned, the examination period may be extended. In the absence of an opinion from the Commission within the examination period, the Commission shall be deemed not to have raised any objections.*
4. *The time periods referred to in paragraphs 1 and 2 shall be shortened in agreement with the Commission if circumstances so warrant.*

Article 6

Coordination *among* Member States

■ The Commission shall facilitate *and encourage* coordination among Member States with a view to:

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

- (c) on the basis of best practice *and in consultation with the Member States, developing optional model clauses, which, if applied, would significantly improve* compliance of future intergovernmental agreements with Union law;
- (ca) *supporting, where appropriate, the development of multilateral intergovernmental agreements involving several Member States or the Union as a whole.*



Article 8
Reporting and review

1. ***By 1 January 2016***, the Commission shall submit a report on the application of this Decision to the European Parliament, the Council and the European Economic and Social Committee.
2. The report shall, in particular, assess ***the extent to which*** this 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 this Decision has on Member States' negotiations with third countries and whether the scope of this Decision and the procedures it lays down are appropriate.***

3. *After submission of the first report referred to in paragraph 1 of this Article, the Commission shall report every three years to the European Parliament and the Council on the information received pursuant to Article 3, having due regard to the confidentiality provisions of this Decision.*

Article 9
Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 10
Addressees

This Decision is addressed to the Member States.

Done at

For the European Parliament

For the Council

The President

The President

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.

7.2.2012

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Industry, Research and Energy

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))

Rapporteur: Marietta Giannakou

SHORT JUSTIFICATION

The European Union is heavily dependent on energy imports. Over 50% of the EU's overall energy needs to be imported, the figure being even higher for gas and oil. The EU's energy security is therefore vulnerable to irregularities of supplies from outside the Union.

Energy security also is of great significance for the EU's strategic interests. Improvements in the EU's energy security would strengthen its strategic role and foreign policy capabilities. Intergovernmental agreements can support the EU's goal of diversifying routes and sources of energy supply, in particular to extend the supply sources to the Black Sea, the Eastern Mediterranean region and Central Asia.

Moreover, energy imports are responsible for 6 % of the EU's total imports, representing enormous economic costs and risks for the EU economy. It is in the interest of the EU and the Member States to manage the external energy relations through intergovernmental agreements and to leverage the negotiation power of the Member States and its vast internal market through the exchange of information and best practises between Member States and the Commission. As a consequence, intergovernmental agreements, in particular when well coordinated between Member States, can enhance the competitiveness of the EU.

Sharing information on intergovernmental agreements with the Commission should also ensure that the individual agreements signed by the Member States support and are in conformity with Community Law, such as the internal market legislation, and the multitude of existing international agreements and initiatives such as the Energy Community Treaty, European Neighbourhood Policies, the EU-Russia Partnership and Cooperation Agreement and four EU-Russia Common Spaces, Multilateral Agreements with Central Asia and the Black Sea region and future agreements such as the foreseen new EU-Russia Agreement, and in particular its energy provisions.

Finally, individual intergovernmental agreements provide an opportunity to promote the EU's

policies for the respect of human rights, democracy, good governance, the rule of law and social dialogue, climate change, the protection of the environment, energy efficiency, and renewable energies. With the increased stability and predictability these agreements should also be able to promote peace in the neighbourhood areas.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a decision

Recital 1

Text proposed by the Commission

(1) The European Council has asked Member States to inform from 1 January 2012 the Commission on all their new and existing bilateral energy agreements with third countries. The Commission should make this information available to all other Member States in an appropriate form, having regard to the need for protection of commercially sensitive information.

Amendment

(1) The European Council has asked Member States to inform from 1 January 2012 the Commission on all their new and existing bilateral energy agreements with third countries. The Commission should make this information available to all other Member States in an appropriate form, having regard to the need for protection of commercially sensitive information, ***as well as the preservation of Union's strategic interests.***

Amendment 2

Proposal for a decision

Recital 2

Text proposed by the Commission

(2) Union-law requires Member States to take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaties ***or*** resulting from the acts of the institutions of the Union. Member States should therefore avoid or eliminate any incompatibilities between Union law and international agreements concluded

Amendment

(2) Union law requires Member States to take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaties, ***and in particular Article 194 of the Treaty on the Functioning of the European Union, and*** resulting from the acts of the institutions of the Union. Member States should therefore avoid or

between Member States and third countries.

eliminate any incompatibilities between Union law and international agreements concluded between Member States and third countries.

Amendment 3

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 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.

Amendment

(3) The proper functioning of the internal energy market ***and the safeguarding of consumer protection*** requires that the energy imported into the Union from third 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, ***while at the same time diminishing its political leverage at international level***. 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.

Amendment 4

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

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

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.

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 5

Proposal for a decision

Recital 9

Text proposed by the Commission

(9) Member States should ***already*** notify ***the intention to open negotiations to*** the Commission ***with regard to*** new intergovernmental ***agreements*** or amendments to existing intergovernmental agreements. The Commission should be kept informed regularly on the ongoing negotiations. ***It should have the right to*** participate as an observer in the negotiations. Member States may also request the Commission to assist them during their negotiations with third countries.

Amendment

(9) Member States should notify the Commission ***when negotiations on a*** new intergovernmental ***agreement*** or amendments to existing intergovernmental agreements ***have been started***. The Commission should be kept informed regularly on the ongoing negotiations. ***At the request of the Commission or the Member State concerned, the Commission may*** participate as an observer in the negotiations. Member States may also request the Commission to assist them during their negotiations with third countries, ***without jeopardising their ability to negotiate the content of the agreements***.

Amendment 6

Proposal for a decision

Recital 12

Text proposed by the Commission

(12) The Commission should make all received information available to all other Member States in electronic form. The Commission should respect requests from Member States to treat information, in particular commercial information, submitted as confidential. Requests for

Amendment

(12) The Commission should make all received ***non-confidential*** information available to all other Member States in electronic form. The Commission should respect requests from Member States to treat information, in particular commercial information, submitted as confidential.

confidentiality should however not restrict access of the Commission itself to confidential information as the Commission needs to have comprehensive information for its own assessment. The requests for confidentiality are 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 Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

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 assessment. ***The Commission is responsible for guaranteeing the application of the confidentiality clause and its legal consequences.*** The requests for confidentiality are 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 Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Amendment 7

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, ***in cooperation with the EEAS as regards Union's external policies,*** 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 ***or with international agreements concluded by the Union. The Commission should also suggest non-binding standard clauses in reference to Union's principles and policies such as the respect of human rights, democracy, good governance, the rule of law and social dialogues including corporate social responsibility, climate change, the protection of the environment, energy efficiency, renewable energies, and***

Amendment 8

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 coordination 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 coordination should enable Member States to fully benefit from the political and economic weight of the Union, *allow the Commission and Member States to fully coordinate their efforts with respect to importing energy into the EU, including renewable energy, and strengthen the Union's own strategic role and foreign policy capabilities.*

Amendment 9

Proposal for a decision

Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) A member of the Commission responsible for energy and High Representative of the Union for Foreign Affairs and Security Policy, in cooperation with the EEAS, should act actively in accordance with this Decision, promote it with third countries, and annually submit a report on the application of this Decision to the European Parliament, the Council and the European Economic and Social Committee.

Amendment 10

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 as defined in Article 2.*

Amendment 11

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;

Amendment 12

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.

Amendment

1. Member States shall submit *to the Commission at the latest three months after the entry into force of this Decision* all intergovernmental agreements between them and third countries, including their annexes and all amendments thereto, *as well as other texts they refer to explicitly insofar as these other texts contain elements which have an operational impact on the functioning of the internal energy market or the security of energy*

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.

supply. The Commission shall make the received documents, ***except confidential parts***, accessible in electronic form to all other Member States. ***Within 12 months after the reception of the respective Intergovernmental Agreements, the Commission, in cooperation with the EEAS regarding the Union's external policies, shall evaluate the agreements communicated and inform the concerned Member States about the possible incompatibility of their agreements with Union law and with international agreements concluded by the Union.***

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 13

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

Amendment

2. When a Member State ***enters*** 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 the objectives*** of the negotiations, the provisions to be addressed in 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. On request of 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 Commission or the Member State concerned, the Commission may participate as an observer in the negotiations.

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

Amendment 14

Proposal for a decision Article 3 - paragraph 3

Text proposed by the Commission

3. Upon ratification of an intergovernmental agreement or of an amendment to an intergovernmental agreement, the Member State concerned shall submit the agreement or the amendment of the agreement, including their annexes and other texts these agreements or amendments refer to explicitly, ***to the Commission which*** shall make the received documents, with the exception of confidential parts identified according to Article 7, accessible to all other Member States in electronic form.

Amendment

3. Upon ratification of an intergovernmental agreement or of an amendment to an intergovernmental agreement, the Member State concerned shall submit ***to the Commission the*** agreement or the amendment of the agreement, including their annexes and other texts these agreements or amendments refer to explicitly ***insofar as these other texts contain elements which have an operational impact on the functioning of the internal energy market or the security of energy supply. Member States may make available summaries of the information submitted. According to the instructions of the Member State concerned,*** the Commission shall make the received documents, with the exception of confidential parts identified according to Article 7, accessible to all other Member States in electronic form.

Amendment 15

Proposal for a decision Article 5

Text proposed by the Commission

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 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.

Amendment

1. As early as possible and no later than four 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 inform that Member State, within two months of being informed of the closure of the negotiations, of any doubts about the compatibility of the negotiated agreement, and its annexes and other texts it refers to explicitly, with Union law, in particular with Union competition law and internal energy market legislation, or with international agreements concluded by the Union. 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 or international agreements concluded by the Union. 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 or international agreements concluded by the Union, 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 or international agreements concluded by the Union, the Commission shall consider corrective measures to rectify the situation.

Amendment 16

Proposal for a decision

Article 6 - paragraph 1 - point a

Text proposed by the Commission

(a) review developments in relation to intergovernmental agreements;

Amendment

(a) review developments in relation to intergovernmental agreements *and ensure consistency and coherence in the Union's external energy relations with key producer, transit, and consumer countries;*

Amendment 17

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, to consider appropriate action to address these problems, *and to propose possible solutions for the Member States;*

Amendment 18

Proposal for a decision

Article 6 - paragraph 1 - point b a (new)

Text proposed by the Commission

Amendment

(ba) enhance the overall Union strategic role through a strong and effective coordinated approach to energy-supplying countries.

Amendment 19

Proposal for a decision

Article 6 - paragraph 1 - point c

Text proposed by the Commission

Amendment

(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.

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

Amendment 20

Proposal for a decision

Article 7

Text proposed by the Commission

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.

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. ***The Commission shall ensure that access to the confidential information is strictly limited to the Commission staff for whom***

it is absolutely necessary to have the information available for the purposes referred to in Articles 4, 5 and 6.

Amendment 21

Proposal for a decision Article 8

Text proposed by the Commission

Review

1. *Four years after its entry into force, the Commission shall submit a report on the application of this Decision to the European Parliament, the Council and the European Economic and Social Committee.*

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

Reporting and review

1. *The Commission shall submit a report on the application of this Decision to the European Parliament, the Council and the European Economic and Social Committee annually. The report shall cover the information received pursuant to Article 3.*

2. *The Commission should also provide the European Parliament with a comprehensive evaluation report within four years of the entering into force of this Decision. The evaluation 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.*

PROCEDURE

Title	Exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy						
References	COM(2011)0540 – C7-0235/2011 – 2011/0238(COD)						
Committee responsible Date announced in plenary	ITRE 15.9.2011						
Committee(s) asked for opinion(s) Date announced in plenary	AFET 15.9.2011						
Discussed in committee	6.2.2012						
Date adopted	6.2.2012						
Result of final vote	<table> <tr> <td>+: </td><td>39</td></tr> <tr> <td>–: </td><td>1</td></tr> <tr> <td>0: </td><td>7</td></tr> </table>	+:	39	–:	1	0:	7
+:	39						
–:	1						
0:	7						
Members present for the final vote	Bastiaan Belder, Frieda Brepoels, Elmar Brok, Jerzy Buzek, Arnaud Danjean, Michael Gahler, Marietta Giannakou, Anna Ibrisagic, Liisa Jaakonsaari, Ioannis Kasoulides, Tunne Kelam, Nicole Kiil-Nielsen, Evgeni Kirilov, Wolfgang Kreissl-Dörfler, Eduard Kukan, Vytautas Landsbergis, Krzysztof Lisek, Ulrike Lunacek, Barry Madlener, Mario Mauro, Kyriakos Mavronikolas, Francisco José Millán Mon, Alexander Mirsky, María Muñoz De Urquiza, Ria Oomen-Ruijten, Pier Antonio Panzeri, Ioan Mircea Pașcu, Alojz Peterle, Cristian Dan Preda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Nikolaos Salavrakos, Jacek Saryusz-Wolski, Sir Graham Watson, Boris Zala						
Substitute(s) present for the final vote	Elena Băsescu, Véronique De Keyser, Tanja Fajon, Elisabeth Jeggle, Doris Pack, Godelieve Quisthoudt-Rowohl, Marietje Schaake, Indrek Tarand, Traian Ungureanu, Ivo Vajgl						
Substitute(s) under Rule 187(2) present for the final vote	Marije Cornelissen, Rui Tavares						

30.1.2012

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on Industry, Research and Energy

on 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))

Rapporteur: Yannick Jadot

SHORT JUSTIFICATION

Given the fact that the EU for an extended period will remain a net importer of energy, the Commission's trade policy has to assure favourable conditions for trade in energy products. In this goal it is supported by Member States entering into Intergovernmental Agreements with third countries, which often relate also to trading conditions and investments in fixed energy infrastructure. While these aspects could have justified the extension of the legal base of the Decision to Art. 207 TFEU, it shall be recognized that the Decision's scope is primarily to establish an information exchange system in order to ensure the proper function of the internal market, increased sustainability and security of energy supply, and therefore is based on Art.194 TFEU. Setting up an information exchange mechanism with regard to Intergovernmental Agreements between Member States and third countries in the field of energy serves hence primarily the goals of European energy policy.

The proposed information exchange between Member States and a coordinated support by the European Commission would **strengthen the internal market** by ensuring the correct implementation of legislation such as the Third Energy Package. The proposal provides an instrument to reduce pressure for Member States to accept regulatory concessions in intergovernmental agreements that would be incompatible with EU law. Better information and knowledge about regulatory developments will also help the formulation of the Commission's trade policy vis-à-vis big energy supplier states, such as Russia.

Additionally it can help to **increase the security of supply** to the EU by coordinating Member States efforts during negotiation processes. It supports the realisation of the solidarity mechanisms provided for in the security of gas supply regulation by informing on the amount and sources of energy imported, in order to make security of supply a reality for all EU Member States. Secondly, it also enhances energy security by making sure that all agreements are fully compatible with the Union's internal market for energy and EU law, and therefore

providing a stable legal framework necessary for the investments made. This is also in the interest of the EU's trade and investment policy competence. Considering that the EU is spending more than €400 billion per year to import energy it is necessary to reduce the EU foreign energy debt and increase its geopolitical independence and energy security. The proposed information exchange mechanism and the simultaneous efforts of Member States to realise the minimum 20% energy savings target will reduce by at least €50 billion per year the wealth transfer from EU economies to energy producing countries and enhance EU energy security.

The information exchange mechanism should also **enhance sustainability** by matching investment decisions in energy with the long-term EU climate and energy goals and by avoiding a duplication of energy transport infrastructure. The latter could - given the long investment cycles and lifetime of this infrastructure - not only result in inefficiencies and a lock-in into too much fossil fuel capacity being redundant in a future setting of a sustainable EU economy, but would also be economically inefficient, leading to additional costs. This was already evoked by the European Parliament in the Bendtsen report¹, stating that energy savings are key to increase security of supply, as achieving the 20% energy savings target would save as much energy as fifteen Nabucco pipelines could deliver. The final aim must be that all Member States' enterprises and consumers are benefitting from a sustainable and secure energy supply at affordable prices.

The proposed amendments shall support the Commission proposal to this end, while preserving Member States' autonomy in negotiating agreements with third countries.

An **ex-ante compatibility check** on the negotiation of intergovernmental agreements is the most efficient way to create the needed certainty, with regard to the compatibility of treaties with EU law and long-term policy objectives. To work effectively, it must become the rule that Commission assesses **new agreements** before their conclusion. If Member States themselves are to ensure legal compatibility, as well as increased supply security and sustainability, the Commission has the duty to assess and to propose eventually needed changes through an opinion. The concerned Member State shall be provided with these recommendations in time to avoid legal uncertainties, uncoordinated, unsustainable or economically ill-based decisions and possible future infringement procedures led by the Commission.

According to the same line, **existing agreements** should be assessed by the Commission, and commented upon regarding possible incompatibilities with EU law to allow Member States a proper renegotiation of these agreements. However, no formal authorization process of existing or new agreements should be envisioned, as this would overburden the proposed Decision.

In order to avoid placing undue burden to companies and Member States, it should also be clear that the Commission will have to apply a consistent and coherent approach when issuing its opinion, especially regarding all EU legal provisions. Any existing and future **third party access exemptions** should be evaluated against the background of sound legal framework in competition policy and be designed to the benefit of all EU citizens, especially to the energy consumers, who should reap the full benefit of a liberalised energy market. This should be

¹ European Parliament resolution of 15 December 2010 on Revision of the Energy Efficiency Action Plan (2010/2107(INI))

seen as the goal of the proposed enhanced information exchange.

AMENDMENTS

The Committee on International Trade calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

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 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.

Amendment

(3) The proper functioning of the internal energy market requires that the energy imported into the Union from third 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 ***while avoiding the build up of surplus capacity and therefore ensuring economic efficiency, sustainability and fair consumer prices.***

Amendment 2

Proposal for a decision

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The Commission should ensure that the interests of the European consumers

are respected by insisting on compatibility of Intergovernmental Agreements in the field of energy with EU law and especially EU internal market legislation, including the Third Party Access provisions in the EU legislation of the internal market for energy.

Amendment 3

Proposal for a decision

Recital 5

Text proposed by the Commission

(5) Intergovernmental agreements which need to be notified in their entirety to the Commission on the basis of other Union acts such as [Regulation (EU) No .../... of the European Parliament and of the Council of ... establishing transitional arrangements for bilateral investment agreements between Member States and third countries] should be excluded from the information exchange mechanism established by this Decision.

Amendment

(5) Intergovernmental agreements which need to be notified in their entirety to the Commission on the basis of other Union acts such as [Regulation (EU) No .../... of the European Parliament and of the Council of ... establishing transitional arrangements for bilateral investment agreements between Member States and third countries] should be excluded from the information exchange mechanism established by this Decision. ***The Commission should, however, undertake a screening of such bilateral investment agreements between Member States and third countries regarding specific energy provision contained therein which have relevance to the scope of this Decision, resulting in a report to the Member States and the Parliament.***

Amendment 4

Proposal for a decision

Recital 10

Text proposed by the Commission

(10) The Commission should, ***on its own initiative or on request from the Member***

Amendment

(10) The Commission should assess the compatibility of the negotiated agreement

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.

with Union law before the agreement has been signed ***and submit an opinion as to whether any renegotiation of the agreement is required on the basis of provisions under Union law to which the Member States concerned should have due regard.***

Amendment 5

Proposal for a decision Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Given the existence of an internal market for energy and a common energy strategy, intergovernmental agreements impact on the common policy. For that reason it must be ensured that intergovernmental agreements are in keeping with the common policy concept.

Amendment 6

Proposal for a decision Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Many energy agreements relate in part to investment. The Energy Charter, for example, includes investment rules. For that reason, consistency must be ensured between energy agreements and investment agreements. In particular, account must be taken in this respect of the European Parliament's rights and recommendations in relation to future investment policy.

Amendment 7

Proposal for a decision
Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) The Commission should take on an active and encouraging role in the coordination of intergovernmental agreements in order to ensure that all the stipulated requirements are capable of implementation.

Amendment 8

Proposal for a decision
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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

1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements ***in order to improve the Union's energy security, the functioning of the internal market for energy and the consistency and coherence of the Union's external action in the field of energy, and in order to ensure their compatibility with EU law .***

Amendment 9

Proposal for a decision
Article 3 – paragraph 1

Text proposed by the Commission

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. The Commission shall make

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.

the received documents accessible in electronic form to all other Member States. ***Within 12 months after the reception of the respective Intergovernmental Agreements, the Commission shall evaluate the agreements communicated and inform concerned Member States about possible incompatibilities of their agreements with EU law.*** 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 10

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.

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 ***but in no case later than 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 Commission shall make the received information accessible

The Member State concerned shall keep the Commission informed regularly of the ongoing negotiations. On request of the Commission or the Member State concerned, the Commission may participate as an observer in the negotiations.

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

Amendment 11

Proposal for a decision Article 5 – paragraph 1

Text proposed by the Commission

1. 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 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.

Amendment

1. *Member States shall submit negotiated but not yet signed draft intergovernmental agreements to the Commission for examination*. The Commission *shall, by* four *months* after *submission* at the latest, assess the compatibility of the negotiated agreement with Union law, *especially concerning competition law and internal energy market legislation*. The Member State concerned shall refrain from signing the agreement *in this examination* period. In agreement with the Member State concerned, the examination period might be prolonged. *In* the absence of an opinion by the Commission within the examination period, the Commission shall be deemed not to have raised objections.

Amendment 12

Proposal for a decision Article 5 a (new)

Text proposed by the Commission

Amendment

5a. In the case the assessment of a draft intergovernmental agreement results in a negative opinion, the Commission shall provide possible solutions or specify the needs of re-negotiation which shall be taken duly into account by the Member State concerned.

Amendment 13

Proposal for a decision Article 6 – paragraph 1 - introductory part

Text proposed by the Commission

Amendment

1. The Commission shall facilitate the coordination among Member States with the view to:

1. The Commission shall facilitate ***and encourage*** the coordination among Member States with the view to:

Amendment 14

Proposal for a decision Article 6 – point (c)

Text proposed by the Commission

Amendment

(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.

(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 ***and the level of security of energy supply envisioned in the EU's long-term energy and climate objectives.***

Amendment 15

Proposal for a decision Article 6 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

ca) integrate the agreements into and make them part of the common European energy policy as described in the Roadmap 2050.

Amendment 16

Proposal for a decision Article 6a (new)

Text proposed by the Commission

Amendment

Consistency between energy and investment agreements

The Commission shall ensure that energy agreements which contain provisions on investment are in accordance with the legislation on bilateral investment agreements. It shall also safeguard the European Parliament's right of participation in future in relation to energy agreements which include provisions on investment. In particular, account shall be taken of the European Parliament's recommendations on future investment policy.

Amendment 17

Proposal for a decision Article 8 – title

Text proposed by the Commission

Amendment

Review

Reporting and Review

Amendment 18

Proposal for a decision Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall report to the European Parliament every two years on the information that it receives pursuant to Article 3 and shall submit a comprehensive assessment to Parliament within two years of the entry into force of this Decision.

PROCEDURE

Title	Exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy		
References	COM(2011)0540 – C7-0235/2011 – 2011/0238(COD)		
Committee responsible Date announced in plenary	ITRE 15.9.2011		
Committee(s) asked for opinion(s) Date announced in plenary	INTA 15.9.2011		
Discussed in committee	23.11.2011	8.12.2011	20.12.2011
Date adopted	26.1.2012		
Result of final vote	+: 25 -: 1 0: 2		
Members present for the final vote	William (The Earl of) Dartmouth, Laima Liucija Andrikiienė, María Auxiliadora Correa Zamora, Christofer Fjellner, Yannick Jadot, Metin Kazak, Bernd Lange, Emilio Menéndez del Valle, Vital Moreira, Paul Murphy, Cristiana Muscardini, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Helmut Scholz, Peter Št'astný, Gianluca Susta, Keith Taylor, Jan Zahradil, Paweł Zalewski		
Substitute(s) present for the final vote	Josefa Andrés Barea, George Sabin Cutaş, Mário David, Albert Deß, Syed Kamall, Silvana Koch-Mehrin, Inese Vaidere		
Substitute(s) under Rule 187(2) present for the final vote	Jutta Haug, Jean Roatta		

PROCEDURE

Title	Exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy			
References	COM(2011)0540 – C7-0235/2011 – 2011/0238(COD)			
Date submitted to Parliament	7.9.2011			
Committee responsible Date announced in plenary	ITRE 15.9.2011			
Committee(s) asked for opinion(s) Date announced in plenary	AFET 15.9.2011	INTA 15.9.2011		
Rapporteur(s) Date appointed	Krišjānis Kariņš 26.10.2011			
Discussed in committee	12.1.2012	24.1.2012	6.2.2012	18.6.2012
Date adopted	19.6.2012			
Result of final vote	+: –: 0:	36 18 0		
Members present for the final vote	Amelia Andersdotter, Josefa Andrés Barea, Jean-Pierre Audy, Zigmantas Balčytis, Ivo Belet, Bendt Bendtsen, Jan Březina, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Jürgen Creutzmann, Pilar del Castillo Vera, Christian Ehler, Vicky Ford, Gaston Franco, Adam Gierek, Norbert Glante, Fiona Hall, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Bogdan Kazimierz Marcinkiewicz, Marisa Matias, Jaroslav Paška, Aldo Patriciello, Vittorio Prodi, Miloslav Ransdorf, Herbert Reul, Teresa Riera Madurell, Michèle Rivasi, Paul Rübig, Salvador Sedó i Alabart, Francisco Sosa Wagner, Konrad Szymański, Patrizia Toia, Ioannis A. Tsoukalas, Claude Turmes, Niki Tzavela, Marita Ulvskog, Vladimir Urutchev, Alejo Vidal-Quadras			
Substitute(s) present for the final vote	Ioan Enciu, Roger Helmer, Jolanta Emilia Hibner, Yannick Jadot, Ivailo Kalfin, Seán Kelly, Bernd Lange, Werner Langen, Mario Pirillo, Peter Skinner, Lambert van Nistelrooij, Henri Weber			
Date tabled	30.7.2012			