



## EUROPEAN COMMISSION

Brussels, 24.06.2016  
C(2016) 3790 final

Mr Pietro Grasso  
President of the Senato della Repubblica  
Piazza Madama, 1  
IT – 00186 ROMA

*Dear President,*

*The Commission would like to thank the Senato della Repubblica for its Opinions on the proposal for a Decision 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) 53 final} and the Report to the European Parliament, the Council and the European Economic and Social Committee on the application of the Decision 994/2012/EU establishing an information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy {COM(2016) 54 final}.*

*This proposal constitutes an important component of the Energy Union, the goal of which is to provide EU consumers – households and businesses – with secure, sustainable, competitive and affordable energy supplies. Specifically, this proposal aims at ensuring the compatibility of intergovernmental agreements (IGAs) in the field of energy with EU law and to increase their transparency, thereby ensuring the proper functioning of the internal energy market and the EU's security of supply.*

*The impact assessment accompanying the proposal identified the introduction of a mandatory ex-ante assessment as the only efficient way to ensure full compatibility of IGAs in the field of energy with EU law and to increase their transparency. To date, no Member State has managed to terminate or renegotiate those IGAs assessed as non-compliant under Decision No 994/2012/EU<sup>1</sup>. This is notably due to the complex legal situation that arises once IGAs are signed between a Member State and a third country. Once a Member State has concluded an IGA which is binding under public international law and which does not contain a termination or suspension clause, it is - in legal terms - almost impossible for the Member State concerned to terminate the IGA within a short period of time and before the end of its initial duration without the agreement of the third country. The same applies to the renegotiation of an IGA, for which the consent of the third country is required.*

---

<sup>1</sup> OJ L 299, 27.10.2012, pp. 13–17.

*This in turn considerably limits the enforcement powers of the Commission, even if an infringement process were to be launched.*

*In response to the more technical questions in the Opinions, the Commission would like to refer the Senato della Repubblica to the Annex to this letter.*

*The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which your government is represented.*

*The Commission hopes that these clarifications address the issues raised by the Senato della Repubblica and looks forward to continuing our political dialogue in the near future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Maroš Šefčovič  
Vice-President*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Senato della Repubblica in its Opinions and is pleased to offer the following clarifications.*

### On Article 5:

*As regards the concerns of the Senato della Repubblica on the timeline for the Commission's assessment during which the Member State may not sign, ratify or approve a draft intergovernmental agreement or amend an existing one, the Commission would like to highlight that Article 5 of its proposal provides for some flexibility by specifying in its paragraph 3 that the period for the ex-ante assessment by the Commission shall be shortened in agreement with the Commission if circumstances so warrant.*

### On Article 8:

*Concerning Article 8 of the proposal, the Commission would like to stress that agreements between undertakings are clearly beyond the scope of the proposal. This exclusion is explicitly spelled out in Articles 3(4), 6(1) and 7(3). Moreover, the obligation to produce a summary under Article 8(3) does not apply to information submitted in accordance with Article 3(1) and (2) which refer to the notification of draft intergovernmental agreements, amendments to an existing intergovernmental agreement and texts explicitly referred to in the draft intergovernmental agreement or amendment that contain elements that could have an impact on the functioning of the internal energy market or on the EU's security of energy supply. The Commission would therefore like to underline that the confidentiality of agreements between undertakings would be fully protected by its proposal.*

\*\*\*