



EUROPEAN COMMISSION

Brussels, 23.3.2012
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Dear President,

The Commission would like to thank the Chambre des Députés for its Opinion concerning 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) 540 final}.

As regards the comments raised in your Opinion, the Commission would like to provide the following clarifications.

Concerning the impact of the proposed Decision on the energy sector, please note that business relations between the EU and third country energy companies are usually settled by commercial contracts. However, in some cases, commercial negotiations with energy suppliers in third countries demand political and legal support in the form of the conclusion of separate intergovernmental agreements, in particular when the contract covers substantial investments, such as infrastructure developments. The political support is typically provided in order to give reassurances about the stability and predictability of the legal regime that will govern the commercial contract (investment regime, including investment protection, legal regime for the performance of the commercial contract, regulatory regime including tariff setting and licensing rules, transmission and transit rules, customs and taxation regime, dispute settlement etc), and frequently to thus facilitate recourse to private financing. Sometimes the intention of the third country is explicitly to bind the state to assure the commercial contract.

The proposed Decision does in principle not cover commercial contracts between companies but only intergovernmental agreements between states. However, it can not be excluded that an intergovernmental agreement only fulfils the purpose of an umbrella agreement where most provisions, including the ones on regulatory issues, are instead included in a commercial contract. In such cases, it is assumed that the intergovernmental agreement will explicitly refer to this commercial contract in such a way as to effectively make the commercial contract an integral part of the intergovernmental agreement. In order to be able to have a complete picture for an assessment of the compatibility with the internal market rules or the impact on the security of supply, the proposed Decision foresees that such a commercial contract should also be submitted to the Commission. Unless and as far as not otherwise indicated by the relevant Member State for confidentiality reason, it should also be shared with all other Member States.

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Concerning your observations regarding the principle of proportionality, the Commission's experience so far shows that currently not enough information is exchanged on a voluntary basis to ensure that the stated policy objectives are met. The European Council on 4 February 2011 explicitly referred to the need for better coordination of Union and Member States' activities with a view to ensuring consistency and coherence in the EU's external energy relations with key producer, transit, and consumer countries.

The main objective of the proposal is to make sure at an early stage that the intergovernmental agreement will be compatible with the EU internal market legislation and the security of supply policy. Once intergovernmental agreements have been signed and, even more once they are ratified, Member States cannot unilaterally modify them in case certain provisions therein are found to infringe internal market rules. In such cases, Member States would need to renegotiate the intergovernmental agreements with the third countries in question that might however be reluctant to do so. Continuous contacts and exchange of information during the negotiations and the possibility for a compatibility check before the intergovernmental agreement is signed is therefore considered essential. This would also give underlying investment decisions more legal certainty.

In order to have an exhaustive opinion by the Commission under the ex-ante compatibility control mechanism that will give the required legal certainty, it is necessary for the Commission to be given sufficient time to consider the draft intergovernmental agreement. It is necessary to take into consideration that the Commission will need to translate all the relevant documents, examine the intergovernmental agreement under all possible legal aspects and to prepare an opinion for the adoption of the College. The Commission would however only ask for an assessment of the legality of an intergovernmental agreement in rather exceptional cases when it has serious doubts with regard to the compatibility of the agreement. In such case, the Commission's opinion would serve as a last warning for the Member State in question to avoid the conclusion of an incompatible intergovernmental agreement with all the negative consequences this would entail, such as infringement procedure, renegotiation and delay of the project etc.

Finally, concerning your concerns with regard to confidentiality, according to the proposed Decision Member States may indicate to the Commission whether any part of the information submitted is to be regarded as confidential and whether the information provided can be shared with all other Member States. Consequently, the Member States will themselves assess whether information submitted should be considered as confidential. The Commission will fully respect this assessment.

I hope these explanations could clarify the concerns raised in your opinion and I am looking forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*