EUROPEAN COMMISSION

FACT SHEET

Intergovernmental agreements in energy

Short title: Energy agreements with non-EU countries

Teaser: According to the new law Member States will have to notify the Commission about their intergovernmental energy agreements with non-EU countries before concluding them.

Brussels, 10 February 2016

Body:

What are intergovernmental agreements in energy?

The EU's energy dependency is increasing and more and more Member States are seeking new energy supplies outside of the EU. Negotiations with energy suppliers frequently require political and legal support, for example to provide certainty to investors on the construction of energy infrastructure. This political support is given in the form of intergovernmental agreements (IGAs). These agreements are often the basis for more detailed commercial contracts.

The new IGA Decision covers all agreements between one or more Member States and one or more non-EU countries which have an impact on the security of the EU's energy supply and the functioning of the EU internal energy market. It includes intergovernmental agreements and non-legally binding commitments, such as joint political declarations or *memoranda* of understanding that include interpretations of EU law, set conditions for energy supply (i.e. prices) or for the development of energy infrastructure. The IGAs on nuclear issues are excluded from this Decision as they are covered by the Euratom Treaty.

The EU decision on energy intergovernmental agreements is already in force since 17 November 2012. Why a new decision?

In 2015 the Commission carried out an evaluation of the efficiency of the 2012 IGA Decision. It concluded that while the current system is useful for receiving information on existing IGAs and for identifying where they do not comply with EU law, the Decision is not sufficient enough to tackle any such cases. As it stands, the current law requires Member States to notify the Commission of their energy agreements with non-EU countries **only after they have been concluded**. However, it has proven very difficult to renegotiate any terms of the agreements after they have been signed by the parties.

The Commission's analysis of all notified IGAs showed that around one-third of the agreements related to energy infrastructure or energy supply contained provisions that were not compliant with EU law. To date no such agreement has been successfully renegotiated.

What are the main novelties under the revised IGA Decision for Member States compared to existing rules?

The main change, compared to the current IGA Decision, is the introduction of a mandatory ***ex-ante* compatibility check by the Commission**. This means that Member States will have to notify their **draft IGAs to the Commission before concluding them**. Member States will not sign IGAs until the Commission has issued its opinion.

When concluding the proposed intergovernmental agreement or amendment, Member States will have to take full account of the Commission's opinion.

Moreover, the revised IGA Decision will extend its scope to non-legally binding instruments for an *ex-post* assessment.

Further, Member States will have to:

- **inform the Commission about their intent to enter into negotiations** with a non-EU country on a new IGA or to amend an existing one. The Commission has to be kept informed throughout the negotiation process;
- **submit a draft IGA or an amendment** to an existing one to the Commission for an *ex-ante* assessment;
- submit **all existing IGAs** to the Commission;
- submit **all legally non-binding commitments** with non-EU countries, such as *memoranda* of understanding or joint declarations, to the Commission for an *ex-post* assessment.

What will the Commission do?

To ensure that energy intergovernmental agreements do not jeopardise the EU's security of supply or the functioning of the internal market, the Commission:

- will assess draft IGAs or amendments to existing agreements and **inform Member States of possible doubts** on their compatibility with EU law within six weeks upon receipt of the notification;
- will, in case of doubts, **inform the Member State of its opinion** on the compatibility with EU law of the draft IGA or amendment concerned within 12 weeks of the date of notification;
- will **assess existing IGAs** or their amendments and inform Member States in case of doubts on their compatibility with EU law within nine months of notification;
- will make new or existing IGAs or amendments to them and non-legally binding commitments **accessible to other Member States, subject to confidentiality requirements**.

How many such agreements are there?

Following the 2012 decision, 124 IGAs were notified to the Commission.

60% of these cover general energy cooperation, 40% concern agreements on supply, import or transit of oil, gas and electricity; development of energy infrastructure or rules for the exploitation of oil and gas fields. After analysing these agreements, the Commission expressed doubts that 17 of them are not in line with EU law.

These agreements are between two or more sovereign countries. Why do they need to be transparent? Why does the EU need to get involved?

The progressive integration of EU energy markets and infrastructure means that decisions taken by one Member State can have a negative impact on the security of supply in neighbouring countries or on the functioning of the EU internal energy market. The Energy Union strategy with a forward-looking climate policy endorsed by Member States in 2015 sees safeguarding the integrity of EU energy markets as key to securing energy supplies for EU citizens and promoting greater solidarity and a fairer economic union.

Since following EU energy market rules may not always be in the commercial interests of non-EU energy suppliers, Member States may come under pressure to include clauses which hamper the functioning of the EU internal energy market. Particularly troublesome

are clauses that prevent ownership unbundling of energy transport infrastructure and energy generation companies; limit the access of other companies to the infrastructure and do not allow competitive tariff setting or prevent the purchaser of gas or oil from reselling the commodity to other Member States.

Under the new IGA Decision all Member States concerned will receive the same level of information on cross-border projects, this will help **avoid double investments or infrastructure gaps**.

Benefits will also clearly be felt by the individual companies involved in energy projects. Possible issues relating to non-compliance with EU law would be tackled at an early stage, providing **legal certainty** to investors and project promoters and avoiding cancellation or delay costs.

What happens if a Member State does not take into account the Commission's opinion?

The whole idea of an obligatory *ex-ante* assessment of by the Commission is to avoid the situation where Member States sign agreements which are not compatible with EU law. Firstly, the revised IGA Decision would ensure cooperation between the Commission and the Member State by initiating a dialogue on potential non-compliance with EU law. Secondly, under the new Decision Member States will not be able to sign an IGA before the Commission has issued its opinion. When signing, ratifying or agreeing an IGA, the Member States will have to take utmost account of the Commission's opinion. Should a Member State decide to sign an IGA that would be incompatible with EU law, the Commission would have the possibility to launch infringement procedures.

What about commercial agreements between two or more companies? How can the EU intervene if these are not in compliance with EU law?

The new IGA Decision, just like the current IGA Decision, will not cover commercial agreements between companies. The current mechanism of compliance control of commercial contracts, especially with regard to EU competition law, is not changed or affected by the new IGA Decision in any way. However, as in the current IGA Decision, Member States can communicate to the Commission on a voluntary basis such agreements that are referred to in IGAs or non-binding instruments.

Furthermore, the compliance assessment of commercial contracts is covered, for commercial gas supply contracts, by the proposal for a review of the Security of Gas Supply Regulation.

How will confidential information in the agreements be protected?

When submitting the draft IGAs to the Commission, Member States will indicate which parts of the information are confidential. At the same time, however, requests for confidentiality should not restrict the Commission's access to confidential information, as it needs to have comprehensive information for its own assessments. Finally, if a Member State considers an IGA or a non-legally binding instrument to be confidential, it should provide the Commission with a summary of it for the purposes of sharing that summary with the other Member States.

What will happen to already existing intergovernmental agreements that are not in compliance with EU law?

Under the current IGA Decision, the Commission will analyse any agreements submitted to it and where they do not comply with EU law, it may launch infringement proceedings.

If requested by Member States, the Commission could assist them in renegotiating their existing IGAs.

When will the Decision come into force?

The revised IGA Decision will enter into force after the Council and the European Parliament will adopt it under the co-decision procedure.