

Decision No 994/2012/EU establishing an information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy

I. Background

Intergovernmental agreements (IGAs) are common tools to define, in a legally binding way, international relations between two or several States and may relate to issues such as energy supply or infrastructure projects. The Treaty deals with such agreements in Article 101. This provision envisages the possibility that such agreements are not compatible with the Treaty and foresees two consequences: an obligation on the Contracting Party concerned to eliminate inconsistencies for agreements predating the signature of the Treaty, and a breach of Energy Community law in accordance with Article 90 for agreements concluded after that date. The Secretariat already several times had the occasion to remind Contracting Parties of their obligations under Energy Community law with respect to IGAs concluded with third parties. In the past, a call by the Permanent High Level Group to (voluntarily) notify the Secretariat of all agreements concluded remained without any result.

II. The EU *acquis* on IGA notification

The situation in the European Union and its Member States is the same as in the Energy Community. As part of the endeavours to develop a common external energy policy, the European Parliament and the Council on 25 October 2012 adopted Decision No 994/2012/EU establishing an information exchange mechanism on intergovernmental agreements between Member States and third countries in the field of energy. The objective of this mechanism is to increase transparency among the Member States and ensure that EU internal market rules and energy security policy goals are respected in such agreements.

The Decision establishes an information exchange mechanism covering intergovernmental agreements having an impact on the internal energy market or on the security of energy supply. The mechanism applies to existing IGAs. All existing IGAs had to be communicated to the Commission by 17 February 2013. The Decision also envisages the possibility to notify the Commission of a new intergovernmental agreement with a third country before or during the negotiations thereof. The Commission then provides the Member State with an opinion on the compatibility of the negotiated agreement with Union law. Member States may also request the assistance of the Commission in negotiations or invite it to participate as an observer. The Commission makes information it receives available to all other Member States in secure electronic form; confidential treatment of the information obtained is envisaged.

III. Preliminary impact assessment and potential areas of adaptation

The incorporation of this Decision into the framework of the Energy Community can be achieved without financial impact either on the Contracting Parties' or the Energy Community's budget. As in the EU, the Decision will enhance transparency and security of supply. It fits particularly well into the institutional design of the Treaty as it tasks the Secretariat (replacing the Commission) with providing assistance (Article 67), does not confer any executive powers on the Commission/Secretariat and may, by introducing an ex ante review procedure, avoid ex post

infringement actions under Article 90 of the Treaty. The remaining need for adaptations besides the general institutional replacements will be minimal.

IV. Legal basis

The Decision can be incorporated on the basis of Title IV of the Treaty or Article 100.