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NOTE

from:	General Secretariat of the Council
to:	Delegations
No. Cion prop.:	13943/11 ENER 283 CODEC 1406
Subject:	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 - <i>Preparation of Presidency compromise for informal trilogue</i>

With a view to preparing the mandate for the Presidency for the first informal trilogue, the 4-column text in Annex contains the Commission proposal, the ITRE opinion, the provisional Council position (as it stood on 17 February) and the proposed Presidency compromise.

N.B. the text in the second column is based on the vote in ITRE on 28 February; since no official document on the outcome of this vote exists yet, this text remains subject to later verification. "AFET" and "INTA" refer to the relevant EP Committees that proposed the amendment; "CA" refers to an intra-ITRE compromise amendment.

Changes as compared to the Commission proposal are in **bold**; deletions are reflected by [].

In the fourth column, changes proposed in response to draft amendments are reflected in **bold italics**; all changes compared to the previous text are furthermore underlined.

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

COMMISSION PROPOSAL	ITRE OPINION	PROVISIONAL COUNCIL POSITION (as of 17 February)	PRESIDENCY COMPROMISE
RECITALS			
(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.	AM 1 AFET (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, <i>as well as the preservation of Union's strategic interests.</i>	(1) The European Council has asked Member States to inform the Commission from 1 January 2012 II 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, <i>as well as the preservation of the Union's strategic interests.</i>	<i>Accept AM 1 AFET</i>
(2) Union-law requires Member States to take all appropriate	AM 2 AFET (2) Union law requires Member States to take all appropriate	(2) Union law requires Member States to take all appropriate	<i>Reject AM 2 AFET</i> II

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 between Member States and third countries.	measures to ensure fulfilment of the obligations arising out of the Treaties, <i>and in particular Article 194 of the Treaty on the Functioning of the European Union, and</i> 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 between Member States and third countries.	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 between Member States and third countries.
(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	CA 8 (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 <i>and disadvantageous</i> position with regard to security of energy supply, <i>and would undermine any of its potential benefits to European industry and consumers</i> . 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	<i>Accept in part CA 8</i> (3) The proper functioning of the internal energy market requires that the energy imported into the Union]] be fully governed by the rules establishing an internal energy market. An internal energy market that is not functioning properly puts the Union]] in a vulnerable <i>and disadvantageous</i> position with regard to security of energy supply, <i>and would undermine its potential benefits to European consumers and industry</i> . 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

energy.	of solidarity, in order to ensure that such agreements are in accordance with Union legislation and <i>with the Union's long-term policy objectives, and</i> effectively secure the supply of energy <i>ensuring economic efficiency, sustainability and fair consumer prices.</i> AM 24 (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 <i>with the Union's long-term energy and climate objectives, and</i> effectively secure <i>(etc.)</i>.		such agreements comply with Union legislation and effectively secure the supply of energy. <u>This transparency would also benefit closer intra-EU cooperation in the field of external energy relations and the level of security of supply envisaged by the Union's long term policy objectives.</u> <i>Reject AM 24</i>
(4) The new information exchange mechanism should only	AM 2 (4) The new information exchange mechanism should only	(4) The new information exchange mechanism should only cover intergovernmental	<i>AM 2 Accepted in substance</i> <i>Reject AM 27</i> (4) The new information

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 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.	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 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. AM 27 (4) The new information exchange mechanism <i>should</i> [] cover 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. <i>For the purpose of this Decision, agreements between Member States and publicly owned commercial entities in third countries should also be considered "intergovernmental agreements".</i>	agreements [] having an impact on the internal market for energy or on the security of energy supply in the Union as these two issues are intrinsically linked. In principle, agreements that are no longer in force or are no longer applied, do not have an impact on the internal market for energy or on the security of energy supply in the Union and are thus not covered by this information exchange mechanism. The new 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 [].	exchange mechanism should only cover intergovernmental agreements [] having an impact on the internal market for energy or on the security of energy supply in the Union as these two issues are intrinsically linked. In principle, agreements that are no longer in force or are no longer applied, do not have an impact on the internal market for energy or on the security of energy supply in the Union and are thus not covered by this information exchange mechanism. The new 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 [].
	AM 2 INTA		<i>Reject AM 2 INTA</i>

	(new) (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.		<i>(since covered in spirit in recital 3)</i>
(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.		(5) Intergovernmental agreements which must [] 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 ¹] should be excluded from the information exchange mechanism established by this Decision.	
	AM 35 (new)(5a) In order to promote the principle of reciprocity in the Union's external energy dimension, Member States should		<i>Reject</i>

¹ [COM 2010 (344) final, not yet adopted]

	<i>be encouraged to only sign contracts with third countries which have introduced legislation in the field of energy that corresponds to EU market rules, especially the rules on ownership unbundling in the Third Energy Package 1.</i>		
	<u>1 OJ L 211, 14.8.2009.</u>		
(6) The exemption from the notification obligation mentioned should not apply to intergovernmental agreements which must be submitted to the Commission in accordance with Article 13(6) 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 and repealing Council Directive 2004/67/EC. Such intergovernmental agreements with third countries which have an impact on the development and use of gas infrastructure and gas supplies should henceforth be notified according to the rules laid down in this Decision. To avoid duplication, a notification submitted		(6) The exemption from the notification obligation mentioned should not apply to intergovernmental agreements which must be submitted to the Commission in accordance with Article 13(6) 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 II.¹ Such intergovernmental agreements with third countries which have an impact on the development and use of gas infrastructure and gas supplies should henceforth be notified according to the rules laid down in this Decision. To avoid duplication, a notification submitted in accordance with this Decision	

¹ OJ L 295, 12.11.2010, p. 1

in accordance with this Decision should be considered to fulfil the notification obligation set out in Regulation (EU) No 994/2010.		should be considered to fulfil the notification obligation set out in Regulation (EU) No 994/2010.	
		(6a) Intergovernmental agreements [] concerning matters within the purview of the Euratom Treaty do not fall within the scope of this Decision.	
(7) This Decision should not concern agreements between commercial entities, except and only as far as the intergovernmental agreements refer explicitly to such commercial agreements. Commercial operators negotiating commercial agreements with operators from third countries may nevertheless seek guidance from the Commission in order to avoid potential conflicts with Union law.		(7) This Decision should not concern agreements between commercial entities []. Commercial operators negotiating commercial agreements with operators from third countries should [] nevertheless 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, provisionally applied within the meaning of Article 25 of the Vienna Convention and new intergovernmental agreements.		(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) 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.	AM 5 AFET (9) Member States should notify the Commission <i>when negotiations on a new intergovernmental agreement or amendments to existing intergovernmental agreements have been started</i>. The Commission should be kept informed regularly on the ongoing negotiations. <i>At the request of the Commission or the Member State concerned, the Commission may</i> participate as an observer in the negotiations. Member States may also request the Commission to assist them during their negotiations with third countries, <i>without jeopardising their ability to negotiate the content of the agreements</i>.	(9) Member States should have the option to [] inform the Commission of negotiations with regard to new intergovernmental agreements or amendments to existing intergovernmental agreements. In that case, the Commission should be kept informed regularly on the ongoing 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.	<i>Reject AM 5 AFET</i> (9) Member States should have the option to [] inform the Commission of negotiations with regard to new intergovernmental agreements or amendments to existing intergovernmental agreements. In that case, the Commission should be kept informed regularly on the ongoing 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. <u>In that case, the Commission should have the possibility to provide advice on how to avoid incompatibilities with Union law, and to draw attention to the Union's long-term policy objectives and the principle of solidarity between Member States.</u>
AM 3			<i>Accept in part</i>

	(new) (9a) <i>In the light of primacy of Union law and the principle of sincere cooperation between the Member States and the Union enshrined in Article 4(3) of the Treaty on European Union and taking account of Article 351 of the Treaty of the Functioning of the European Union the Commission should assess the compatibility of existing intergovernmental agreements not yet notified with Union law. In the event of incompatibility, Member States should take all necessary steps to find a proportionate solution to eliminate the incompatibility identified.</i>		(9a) <u> </u> <i>The Commission should assess the compatibility of existing intergovernmental agreements not yet notified with Union law. In the event of incompatibility, Member States should take all necessary steps to find a proportionate solution to eliminate the incompatibility identified.</i>
(10) The Commission should, on its own initiative or on request from the Member 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.	CA 9 (10) The Commission should, on its own initiative or on request from the Member State which has negotiated the intergovernmental agreement, have the right to assess the compatibility of the negotiated agreement with Union law <i>and with the Union's long-term policy objectives</i> before the agreement has been signed. <i>Where the assessment identifies incompatibility with Union law or long-term policy objectives, the Commission should issue an opinion specifying the</i>	(10) Where a [] Member State which has negotiated an [] intergovernmental agreement has informed it before the closure of negotiations 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 [].	<u>Reject</u>

	<i>identified incompatibility and making recommendations to eliminate it. Member States should take due account of such recommendations and renegotiate the agreement, if necessary. If the Commission considers that the recommendations have not been duly taken into account and doubts about the compatibility of the intergovernmental agreement with Union law persist, the Commission should launch infringement proceedings.</i>		
(11) All final, ratified agreements covered by this Decision should be transmitted to the Commission in order to allow for full information of all other Member States.	AM 48 (11) All final, ratified intergovernmental agreements covered by this Decision should be transmitted to the Commission in order to allow for full information of all other Member States.	(11) All final, ratified agreements covered by this Decision should be transmitted to the Commission in order to allow [] all other Member States to be informed .	<i>Accept</i> (11) All final, ratified intergovernmental agreements covered by this Decision should be transmitted to the Commission in order to allow [] all other Member States to be informed .
(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, submitted as confidential, submitted as commercial information, submitted as confidential. Requests for confidentiality should however not	AM 6 AFET (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. Requests for confidentiality should however not	(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 submitted [] as confidential. Requests for confidentiality should however not restrict access of the Commission	<i>Accept AM 6 AFET in part</i> <i>Accept AM 50</i> (12) The Commission should make all received information available to all other Member States in secure electronic form. The Commission should respect requests from Member States to treat information submitted [] as confidential. Requests for confidentiality should however not restrict access of the Commission

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.	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.	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 and its legal consequences. The 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 documents.	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 and its legal consequences. The 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 documents.
(13) A permanent exchange of	AM 51 (13) A permanent exchange of	(12a) If a Member State considers an intergovernmental agreement to be confidential, it should provide a summary thereof to the Commission, to be shared with the other Member States. (13) A permanent exchange of	<i>Accept AM 51 in part</i> <i>Accept AM 7 AFET in part</i> (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.	information on intergovernmental agreements at Union level should allow to develop best practices. On the basis of those best practices the Commission should recommend <i>non-binding</i> standard clauses for the use in intergovernmental agreements between Member States and third countries. <i>In particular, standard clauses should address compliance of the intergovernmental agreement with Union competition law and internal energy market rules.</i> The use of these non-binding standard clauses should exclude conflicts of intergovernmental agreements with Union law. AM 7 AFET (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, <i>in cooperation with the EEAS as regards Union's external policies</i> , 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	information on intergovernmental agreements at Union level should allow to develop best practices. On the basis of those best practices the Commission should develop [] optional model clauses to be used [] in intergovernmental agreements between Member States and third countries. The use of these model clauses should in principle avoid conflicts of intergovernmental agreements with Union law, in particular competition law and internal energy market rules, or with international agreements concluded by the Union. Their use should be optional, and their content could be adapted to any particular circumstance. []	information on intergovernmental agreements at Union level should allow to develop best practices. On the basis of those best practices the Commission should develop [] optional model clauses to be used [] in intergovernmental agreements between Member States and third countries. The use of these model clauses should in principle avoid conflicts of intergovernmental agreements with Union law. Their use should be optional, and their content could be adapted to any particular circumstance. []	information on intergovernmental agreements at Union level should allow to develop best practices. On the basis of those best practices the Commission, <u>where appropriate in cooperation with the EEAS as regards Union's external policies</u> , should develop [] optional model clauses to be used [] in intergovernmental agreements between Member States and third countries. The use of these model clauses should in principle avoid conflicts of intergovernmental agreements with Union law, in particular competition law and internal energy market rules, or with international agreements concluded by the Union. Their use should be optional, and their content could be adapted to any particular circumstance. []
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	intergovernmental agreements with Union law <i>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 EU biofuel targets.</i>		
	AM 53 (new) (13a) <i>Given the existence of an internal market for energy and a common energy strategy in the EU, 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.</i>		<i>Reject</i>
(14) The improved mutual knowledge of existing and new intergovernmental agreements should allow for a better coordination in energy matters between the Member States	AM 6 (14) The improved mutual knowledge of existing and new intergovernmental agreements should allow for a better coordination in energy matters between the Member States	(14) The improved mutual knowledge of existing and new intergovernmental agreements should allow for a better coordination in energy matters between the Member States	<i>Accept with changes</i> (14) The improved mutual knowledge of existing and new intergovernmental agreements should allow for a better coordination in energy matters between the Member States

	<i>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.</i>		
	AM 55 (new) <i>(14b) The Commission should take on an active and encouraging role in the coordination of intergovernmental agreements in order to ensure that all the targets set can be achieved.</i>		<i>Reject</i>
(15) The mechanism for the exchange of information provided for in this Decision should be without prejudice to the application of the Union rules on infringements and competition.		(15) The mechanism for the exchange of information provided for in this Decision should be without prejudice to the application of the Union rules on infringements and competition.	
	AM 7 (new) <i>(15a) The Commission should assess whether this Decision is sufficient and effective not later than four years after its entry into force, in order to ensure full compliance of intergovernmental agreements</i>		<i>Reject AM 7</i>

	with Union law and a high level of coordination between Member States with regard to intergovernmental agreements. If this assessment discovers any deficiencies in the regulatory framework, the Commission should present a legislative proposal to address the deficiency.		
	AM 9 (new) (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.		Reject AM 9
		(16) 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 this decision, 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 those objectives.	
ARTICLES			
<i>Article 1</i> Subject matter and scope		<i>Article 1</i> 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.	CA 1 1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements <i>between Member States and third countries in the field of energy, in order to secure functioning of the internal market, to strive for consistent external action in the field of energy, to ensure coherence with Union law, and achieve the level of security of supply envisaged by the Union's long term policy objectives, including those described in the</i>	1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements, as defined in Article 2, in the field of energy [] .	1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements, as defined in Article 2, in the field of energy [] in order to optimise the functioning of the internal market [] . <i>Note: CA 1 is also addressed in part in compromise for recital 3</i>

<i>2050 roadmaps.</i>			
2. Intergovernmental agreements which are already in their entirety subject to other specific notification procedures under Union law, except for intergovernmental agreements which shall be submitted to the Commission in accordance with Article 13(6) of Regulation (EU) No 994/2010, shall not be covered by this Decision.	AM 9 2. <i>This Decision shall not apply</i> to intergovernmental agreements which are already in their entirety subject to other specific notification procedures under Union law, except for intergovernmental agreements which shall be <i>communicated</i> to the Commission in accordance with Article 13(6) of Regulation (EU) No 994/2010.	2. This Decision shall not apply to intergovernmental agreements which are already in their entirety subject to other specific notification procedures under Union law, excepting [] intergovernmental agreements which must [] be communicated to the Commission in accordance with Article 13(6) of Regulation (EU) No 994/2010 [].	<i>Amendment identical to Council text</i>
<i>Article 2</i> Definitions		<i>Article 2</i> Definitions	
For the purposes of this Decision the following definitions apply:		For the purposes of this Decision the following definitions apply:	
(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;	AM 10 (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; AM 60 (1) 'intergovernmental	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 market for energy or on the security of energy supply in the Union. However, where such agreement also covers other issues, only the	<i>AM 10 accepted in spirit in Council text</i> <i>Reject AM 60</i> II

	agreements' means any legally binding agreements between Member States and third countries <i>in the field</i> of energy. For the purpose of this Decision, agreements between Member States and publicly owned commercial entities in third countries shall also be considered "intergovernmental agreements";	provisions of that agreement that relate to energy, including those energy-related provisions, shall constitute an "intergovernmental agreement" for the purposes of this Decision;	
(2) existing intergovernmental agreements" means intergovernmental agreements which have entered into force prior to the entry into force of this Decision.	AM 63 (1) 'intergovernmental agreements' means any legally binding agreements <i>or memoranda of understanding</i> 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;	2. "existing intergovernmental agreement[]" means an intergovernmental agreement[] which has entered into force, or is applied provisionally , prior to the entry into force of this Decision.	<i>Reject</i>
<i>Article 3</i> Exchange of information between Commission and Member States		<i>Article 3</i> Exchange of information between the Commission and Member States	
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	CA 2 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	1. Member States shall submit to the Commission at the latest three months after the entry into force of this Decision all existing [] intergovernmental agreements [], including their annexes [] and all	<i>Accept in part</i> 1. Member States shall submit to the Commission at the latest three months after the entry into force of this Decision all existing [] intergovernmental agreements [], including their annexes [] and all

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.	refer to explicitly and all amendments thereto to the Commission at the latest three months after the entry into force of this Decision. <i>Commercial agreements, which are not referred to in an intergovernmental agreement, are not subject to this obligation. Within 9 months following the submission of the intergovernmental agreements in their entirety, including their annexes and other texts they refer to explicitly and all amendments thereto, the Commission shall assess their compatibility with Union law, in particular with EU competition law and internal energy market legislation. Should the Commission consider that an intergovernmental agreement is not compatible with Union law, the Commission shall communicate to the Member State concerned its concerns regarding the compatibility. The Member State shall then take all appropriate steps to eliminate the incompatibility identified.</i> The Commission shall make the received documents, <i>with exception of confidential parts identified according to article 7</i>, accessible in	amendments to those agreements. Furthermore, where these agreements refer explicitly to other texts, Member States shall submit those other texts [] insofar as they contain elements which impact on the functioning of the internal market for energy or on the security of energy supply in the Union. However, agreements between commercial entities do not fall under this obligation. The initial assessment as to whether an existing intergovernmental agreement, or another text to which an existing intergovernmental agreement refers to explicitly, has an impact on the internal market for energy or the security of supply in the Union is the responsibility of Member States; in doubt, a Member State may consult the Commission. Existing [] intergovernmental agreements which have already been communicated to the Commission in accordance with Article 13(6) of Regulation (EU) No 994/2010 [] at the date of entry into force of this Decision and [] which are fulfilling the requirements of this paragraph,	amendments to those agreements. Furthermore, where these agreements refer explicitly to other texts, Member States shall submit those other texts [] insofar as they contain elements which impact on the functioning of the internal market for energy or on the security of energy supply in the Union. However, agreements between commercial entities do not fall under this obligation. The initial assessment as to whether an existing intergovernmental agreement, or another text to which an existing intergovernmental agreement refers to explicitly, has an impact on the internal market for energy or the security of supply in the Union is the responsibility of Member States; in doubt, a Member State may consult the Commission. Existing [] intergovernmental agreements which have already been communicated to the Commission in accordance with Article 13(6) of Regulation (EU) No 994/2010 [] at the date of entry into force of this Decision and [] which are fulfilling the requirements of this paragraph,
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	<i>secure electronic form, which ensures that sensitive information is protected, to all other Member States .In the event of incompatibilities of the submitted intergovernmental agreements with Union law, the Commission shall consider launching infringement proceedings.</i>	shall be considered as having been submitted for the purposes of this Decision. <i>Within 9 months following the submission of the <u>existing intergovernmental agreements in their entirety, including their annexes and other texts they refer to explicitly and all amendments thereto, the Commission shall inform the Member States concerned if its first assessment has led to doubts on the <u>compatibility with Union law, in particular with EU competition law and internal energy market legislation.</u></u></i> II <i>Note: the penultimate sentence of the amendment is covered in §4.</i>	shall be considered as having been submitted for the purposes of this Decision. <i>Within 9 months following the submission of the <u>existing intergovernmental agreements in their entirety, including their annexes and other texts they refer to explicitly and all amendments thereto, the Commission shall inform the Member States concerned if its first assessment has led to doubts on the <u>compatibility with Union law, in particular with EU competition law and internal energy market legislation.</u></u></i> II <i>Note: the penultimate sentence of the amendment is covered in §4.</i>
		1a. By ☐ three months after the entry into force of this Decision Member States shall ☐ inform the Commission whether any part of the existing ☐ intergovernmental agreements communicated in accordance with Article 13(6)(a) of Regulation (EU) No 994/2010, is to be regarded as confidential and whether the information provided can be shared with other Member States.	
	CA 3		<i>Accept in part</i>

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. 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.	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 <i>but in no case later than 3 months</i> 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. <i>The Commission shall make the received information accessible to all Member States in secure electronic form, with the exception of confidential parts identified according to Article 7.</i> The Member State concerned shall keep the Commission informed regularly of the ongoing negotiations. <i>The</i>	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 the negotiations, the provisions to be addressed in the negotiations and any other relevant information []. [] In such case, [] the Member State concerned shall keep the Commission informed regularly of the ongoing negotiations. <i>In case the Commission is thus informed, it may provide the negotiating Member State with [] advice on how to avoid incompatibility between the negotiated intergovernmental agreement and Union law [].</i> Furthermore, the Member State concerned shall indicate to the Commission whether this information may be shared with all other Member States[/]; in case the information may be shared, the Commission shall make the received information accessible to all Member States in secure	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 the negotiations, the provisions to be addressed in the negotiations and any other relevant information []. [] In such case, [] the Member State concerned shall keep the Commission informed regularly of the ongoing negotiations. Furthermore, the Member State concerned shall indicate to the Commission whether this information may be shared with all other Member States. []
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	<i>Commission may on its own initiative or shall at the request of the Member State participate as an observer in the negotiations and provide the negotiating Member State with non-binding standard clauses developed in accordance with Article 6(1) and with legal advice on how to avoid incompatibility between the negotiated intergovernmental agreement and Union law, thereby, taking account of the Union's long-term policy objectives and the principle of solidarity between Member States.</i>		<i>electronic form, with the exception of confidential parts identified according to Article 3a.</i> <i>Note: see compromise for recital 9 (long-term policy objectives and solidarity).</i> <i>Note: see also added text in Art. 4.</i> <i>Note: participation of Commission as observer: see Art. 4</i> <i>Note: standard clauses are available, see Art. 6(c)</i>
3. Upon ratification of an intergovernmental agreement or of an amendment to an intergovernmental agreement, the Member State concerned shall submit <i>to the Commission the</i> agreement or <i>the amendment</i> to the agreement, including <i>its</i> annexes. <i>Furthermore, where</i> these agreements refer <i>explicitly</i> to <i>other texts</i> , <i>Member States shall submit those other texts</i> [] insofar as they contain elements which impact on the functioning of the internal market for energy or on the security of energy supply in the	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 [] to the agreement, including its [] annexes. Furthermore, where these agreements refer explicitly to other texts, Member States shall submit those other texts [] insofar as they contain elements which impact on the functioning of the internal market for energy or on the security of energy supply in the		<i>Note: texts almost identical; see also para 4 below.</i>
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, including its 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.	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 to the agreement, including its annexes. Furthermore, where these agreements refer explicitly to other texts, Member States shall submit those other texts insofar as they contain elements which impact on the functioning of the internal market for energy or on the security of energy supply in the		

	Union. 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 <i>secure</i> electronic form.	the Union. However, agreements between commercial entities do not fall under this obligation. The initial assessment as to whether an intergovernmental agreement, or another text to which an intergovernmental agreement refers to explicitly, has an impact on the internal market for energy or the security of supply in the Union is the responsibility of Member States; in case of doubt, a Member State may consult the Commission.	
AM 13 (new)3a Existing or provisionally applied intergovernmental agreements which, at the date of entry into force of this Decision, have already been communicated in accordance with Regulation (EU) No 994/2010 to the Commission, and which fulfil the requirements of this Article, shall be considered as communicated for the purposes of this Decision. A notification submitted in accordance with this Decision should be considered as fulfilling the notification obligation set out			<i>Accepted in substance in Art. 3(1)</i>

	in Article 13(6) of the Regulation (EU) No 994/2010.		
		4. Without prejudice to Article 3a, the Commission shall make the documents which it has received under paragraphs 1, 1a and 3 [] accessible in <i>secure</i> electronic form to all other Member States.	4. Without prejudice to Article 3a, the Commission shall make the documents which it has received under paragraphs 1, 1a and 3 [] accessible in <i>secure</i> electronic form to all other Member States.
		<i>Note: Article 3a is placed next to ITRE Art. 7 for ease of reference</i>	
<i>Article 4</i> Assistance from the Commission		<i>Article 4</i> <i>Assistance from the Commission</i>	
When a Member State informs the Commission pursuant to Article 3(2) of its intention to enter into negotiations in order to amend an existing intergovernmental agreement or to conclude a new intergovernmental agreement, the Member State may request the assistance of the Commission in the negotiations with the third country.	AM 14 <i>deleted</i>	Where [] a Member State informs the Commission pursuant to Article 3(2) of [] negotiations with a third country on an [] intergovernmental agreement or on the [] amendment of an existing intergovernmental agreement [], [] that [] Member State may request the assistance of the Commission in those negotiations []. On request of the Member State concerned, or on request of the Commission and with the written approval of [] the Member State concerned, the Commission may participate as an observer in the	Where [] a Member State informs the Commission pursuant to Article 3(2) of [] negotiations with a third country on an [] intergovernmental agreement or on the [] amendment of an existing intergovernmental agreement [], [] that [] Member State may request the assistance of the Commission in those negotiations []. On request of the Member State concerned, or on request of the Commission and with the written approval of [] the Member State concerned, the Commission may participate as an observer in the

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.	<i>two months after being informed of the closure of the negotiations, of any doubts on the compatibility of the negotiated agreement, and its annexes and other texts it refers to explicitly, with Union law, in particular with EU competition law and EU internal energy market legislation, and the Union's long-term policy objectives.</i> 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. Within those two months the Commission shall issue a legal opinion.	inform that Member State [] of doubts on the compatibility of the negotiated agreement with Union law []. In the absence of a response from the Commission within that period, the Commission shall be deemed not to have raised doubts.	
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	AM 110 <i>(new) 1a Along with the legal opinion, the Commission shall also draw up an analysis showing the extent to which the relevant third country has itself introduced and enforced legislation similar to EU legislation in the field of energy, and in particular the provisions in the Third Energy Package.</i> <i>2. Where the legal opinion identifies incompatibility between the negotiated agreement and Union law, the Commission shall specify that incompatibility and shall make recommendations on how to eliminate the incompatibility.</i> <i>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, the Commission shall consider launching infringement</i>	2. In case the Commission raises such 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 its date of reception. 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 objections.	Reject AM 110
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	<i>proceedings.</i>		
<i>Article 6</i> Coordination with Member States		<i>Article 6</i> Coordination among Member States	
1. The Commission shall facilitate the coordination among Member States with the view to: (a) review developments in relation to intergovernmental agreements; (b) identify common problems in relation to intergovernmental agreements and to consider appropriate action to address these problems; (c) on the basis of best practice, develop standard clauses the use of which would ensure full	AM 113 1. The Commission shall facilitate <i>and encourage</i> the coordination among Member States with the view to: AM 16 AFET (a) review developments in relation to intergovernmental agreements <i>and ensure consistency and coherence in the Union's external energy relations with key producer, transit, and consumer countries;</i> AM 16 (b) identify common problems in relation to intergovernmental agreements and to <i>propose solutions for</i> these problems; AM 18 AFET <i>(new) (ba) enhance the overall Union strategic role through a strong and effective coordinated approach to energy-supplying countries.</i> CA 6 (c) on the basis of best practice <i>and in consultation with the Member States,</i> develop <i>non-</i>	The Commission shall facilitate the coordination among Member States with a view to: (a) review developments in relation to intergovernmental agreements; (b) identify common problems in relation to intergovernmental agreements and to consider appropriate action to address these problems; (c) on the basis of best practice and in consultation with the Member States, develop optional,	<i>Accept AM 113</i> The Commission shall facilitate <i>and encourage</i> the coordination among Member States with a view to: <i>Accept AM 16 AFET (with change)</i> (a) review developments in relation to intergovernmental agreements <i>and strive for consistency and coherence in the Union's external energy relations with producer, transit, and consumer countries;</i> <i>Reject AM 16</i> (b) identify common problems in relation to intergovernmental agreements and to consider appropriate action to address these problems; <i>Note: AM 18 AFET addressed in compromise text for recital 14</i> <i>CA 6 accepted in substance</i> (c) on the basis of best practice and in consultation with the Member States, develop optional,

compliance of future intergovernmental agreements with Union energy legislation.	<i>binding</i> standard clauses the use of which would <i>significantly improve</i> compliance of future intergovernmental agreements with Union energy legislation <i>and the level of security of energy supply envisaged in the Union's long-term policy objectives.</i> AM 120 <i>(ca) encourage the development of multilateral intergovernmental agreements involving multiple Member States or the Union as a whole as opposed to national bilateral agreements with third countries.</i> AM 121 <i>(ca) integrate the agreements into and make them part of the common European energy policy as described in the Roadmap 2050.</i> AM 122 <i>(cb) a guide on the conduct of negotiations, with a view to ensuring compliance with EU law, solidarity between Member States and energy supply.</i>	 model clauses that if applied would <i>significantly improve</i> compliance of future intergovernmental agreements with Union energy legislation. <i>Note: see also recital 13; "non-binding" was not used on lawyer-linguist advice that this could be confusing (N.B. the clauses, if used, would be binding)</i> <i>Reject AM 120</i> <i>Reject AM 121</i> <i>Reject AM 122</i>	 model clauses that if applied would ensure full compliance of future intergovernmental agreements with Union energy legislation.
Article 7			

Confidentiality	AM 18 (first part) and AM 20 AFET (second part) 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.	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 [] is to be regarded as confidential and whether the information provided can be shared with other Member States. The Commission shall respect these indications. 2. Requests for confidentiality under this Article shall [] not restrict access of the Commission itself to confidential information.	Reject AM 18 Accept AM 20 AFET 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 [] is to be regarded as confidential and whether the information provided can be shared with other Member States. The Commission shall respect these 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 staff for whom it is absolutely necessary to have the information available for the purposes referred to in Articles 4, 5 and 6.
Article 8 Review	AM 126 Reporting and Review CA 7 1. Four years after its entry into force, the Commission shall submit	Article 8 Review 1. By four years after its entry into force, the Commission shall	Accept AM 126 Reporting and Review Accept in part CA 7 (see §3) 1. By four years after its entry into force, the Commission shall

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.	submit a report on the application of this Decision to the European Parliament, the Council and the European Economic and Social Committee. <i>The Commission shall report every two years to the European Parliament on the information received pursuant to Article 3.</i> AM 19 2. The report shall in particular assess whether this Decision provides for a sufficient <i>and effective</i> 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. <i>If this Decision does not ensure the full compatibility of intergovernmental agreements with Union law and a high level of coordination between Member States with regard to intergovernmental agreements, the Commission shall, not later than a year after submission of the report, present, if appropriate, a review or complementary legislative proposal.</i>	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.	submit a report on the application of this Decision to the European Parliament, the Council and the European Economic and Social Committee. <i>reject AM 19</i> 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. <i>It shall also assess whether the timeframes laid down in this Decision are appropriate and the impact they have had on Member States' negotiations with third countries.</i> 3. <i>The Commission shall report every four 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.</i>
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	AM 130 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. <i>It shall also assess whether the timeframes laid down in this Decision are appropriate and the impact they have had on Member States' negotiations with third countries.</i>		<i>Accept AM 130 (see above)</i>
<i>Article 9</i> Entry into force This Decision shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.		<i>Article 9</i> Entry into force This Decision shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.	
<i>Article 10</i> Addressees This Decision is addressed to the Member States. Done at Brussels, <i>For the European Parliament</i> <i>For the Council</i>		<i>Article 10</i> Addressees This Decision is addressed to the Member States. Done at [] ... , <i>For the European Parliament</i> <i>The President</i>	

<i>The President President</i>	<i>The</i>		<i>For the Council The President</i>	
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