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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 - examination of draft amendments

Delegations will find in Annex the four-column document. Please note the footnotes to columns 2 and 3.

At the meeting of the Working Party on Energy on 18 October, delegations will be invited to indicate their opinion on all draft amendments contained in the second column. The focus will be on the most important requests from the ITRE Committee, as well as on those key issues where the institutions have diverging views, including:

- definition of 'intergovernmental agreement' (Art. 2(1))
- scope of notification obligations (gas/oil/electricity) (Art. 3(2))
- participation of the Commission in negotiations on IGAs (Art. 4) (*including: Commission shall provide advice (4(1)); Commission to participate if it deems this necessary (4(2))*)
- Member State's account taken of Commission's opinion (Art. 5(4) subpara 2) ("*...the Member State concerned shall demonstrate how the Commission's opinion (...) have [sic] been addressed...*").
- Non-binding instruments ('NBIs') (Art. 7)
- criteria for assessing compatibility/compliance of draft IGAs/NBIs with "the objectives of the Energy Union strategy" (rec. 7), "the objectives of the Energy Union" (rec. 16), "the Union's energy security objectives" (Art. 4(1), 7(4)), "Energy Union objectives" (Art. 4(3)).

Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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/EU¹
(Text with EEA relevance)

COMMISSION PROPOSAL (2016/0031 (COD) - doc. 6226/16)	ITRE OPINION ²	COUNCIL GENERAL APPROACH (doc. 8945/16) ³	COMPROMISE proposal
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194 (2) thereof,		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,	
Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments,		Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee ³ ,		Having regard to the opinion of the European Economic and Social Committee ⁴ ,	
Having regard to the opinion of the Committee of the Regions, Acting in accordance with the ordinary legislative procedure, ⁴		After consulting the Committee of the Regions, Acting in accordance with the ordinary legislative procedure, ⁵	
Whereas:		Whereas:	

¹ Note: the title of the Council general approach is; draft DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing an information exchange mechanism with regard to intergovernmental agreements [] between Member States and third countries in the field of energy and repealing Decision No 994/2012/EU

² Note: the text in this column is **provisional**; it was prepared by the GSC after the ITRÉ vote, and will be checked against the final version to be published by the EP.

³ Furthermore, please note that some draft amendments cover the same text; in this case, the EP will merge the two texts in the aforementioned EP final version.

⁴ Note: the text in this column incorporates some drafting improvements from the Council lawyer-linguists; these changes compared to the text of the general approach, are identified by **underlined** text.

⁵ OJ C , , p. .

Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

<p>(1) The proper functioning of the internal energy market requires that the energy imported into the Union be fully governed by the rules establishing the internal energy market. An internal energy market that does not function properly puts the Union in a vulnerable and disadvantageous position with regard to security of energy supply, and undermines its potential benefits to European consumers and industry.</p>	<p>(1) The proper functioning of the internal energy market requires that the energy imported into the Union be fully governed by the rules establishing the internal energy market. Transparency and compliance with Union law represents an important element in ensuring energy stability of the Union. An internal energy market that does not function properly puts the Union in a vulnerable and disadvantageous position with regard to security of energy supply, and undermines its potential benefits to European consumers and industry.</p>	<p>(1) The proper functioning of the internal energy market requires that the energy imported into the Union be fully governed by the rules establishing the internal energy market. An internal energy market that does not function properly puts the Union in a vulnerable and disadvantageous position with regard to security of energy supply, and undermines its potential benefits to European consumers and industry.</p>	
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	<p>(1a) In order to safeguard the Union's energy supply, it is necessary to diversify energy sources and build new energy interconnections between Member States. At the same time, it is essential to increase energy-security cooperation with the Union's neighbouring countries, with strategic partners and also among the Union institutions.</p>		
<p>(2) The objective of the Energy Union Strategy, as adopted by the Commission on 25 February 2015⁶, is to give consumers secure, sustainable, competitive and affordable energy. More precisely, the Energy Union Strategy emphasizes that full compliance of agreements related to the buying of energy from third countries with Union law is an important element in ensuring energy security, building on the analysis already carried out in the European Energy Security Strategy of May 2014⁷. In the same spirit, the European Council in its conclusions of 19 March 2015 called for full compliance with Union law of all agreements related to the buying of gas from external suppliers, notably by reinforcing transparency of such agreements and compatibility with Union energy security provisions.</p>	<p>(2) The objective of the Energy Union Strategy, as adopted by the Commission on 25 February 2015³, is to give consumers secure, sustainable, competitive and affordable energy. <i>This can be achieved when energy, trade and external policies are pursued in a coherent and consistent manner.</i> More precisely, the Energy Union Strategy emphasizes that full compliance of agreements related to the buying of energy from third countries with Union law is an important element in ensuring energy security, building on the analysis already carried out in the European Energy Security Strategy of May 2014⁴. In the same spirit, the European Council in its conclusions of 19 March 2015 called for full compliance with Union law of all agreements related to the buying of gas from external suppliers, notably by reinforcing</p>	<p>(2) The objective of the Energy Union Strategy, as adopted by the Commission on 25 February 2015⁵, is to give consumers secure, sustainable, competitive and affordable energy. More precisely, the Energy Union Strategy emphasizes that full compliance of agreements related to the buying of energy from third countries with Union law is an important element in ensuring energy security, building on the analysis already carried out in the European Energy Security Strategy of May 2014⁶. In the same spirit, the European Council in its conclusions of 19 March 2015 called for full compliance with Union law of all agreements related to the buying of gas from external suppliers, notably by reinforcing transparency of such agreements and compatibility with Union energy security provisions.</p>	

⁶ COM(2015)80

⁷ COM(2014)330

	<p>transparency of such agreements and compatibility with Union energy security provisions. <i>Given the above, the Commission should attempt, within its competence and with respect to the rules of subsidiarity and proportionality, to ensure that dominant gas suppliers in a region do not abuse their position in breach of Union competition rules, with particular reference to unfair prices charged in Member States as well as to the use of interruptions in supplies for economic and political blackmail.</i></p> <p><i>(2a) The European Parliament, in its resolution of 15 December 2015 on Towards a European Energy Union, stressed the need to enhance the coherence of the Union's external energy security and greater transparency in energy-related agreements^{1a}.</i></p> <p>^{1a} <i>Texts adopted P8_TA(2015)0444</i></p>		
<p>(3) Decision No 994/2012/EU of the European Parliament and of the Council⁷ was useful for receiving information on existing intergovernmental agreements and for identifying problems posed by them in terms of their compatibility with Union law.</p> <p>(4) However, Decision No</p>		<p>(3) Decision No 994/2012/EU of the European Parliament and of the Council⁷ was useful for receiving information on existing intergovernmental agreements and for identifying problems posed by them in terms of their compatibility with Union law.</p> <p>(4) However, Decision No</p>	
<p>(4) However, Decision No</p>		<p>(4) However, Decision No</p>	

⁸ OJ L 299, 27.10.2012, p. 13.

<p>994/2012/EU proved ineffective in terms of ensuring compliance of intergovernmental agreements with Union law. That Decision mainly relied on the assessment of intergovernmental agreements by the Commission after they were concluded by the Member States with a third country. Experience gained in the implementation of the Decision 994/2012/EU demonstrated that such an ex-post assessment does not fully exploit the potential for ensuring compliance of intergovernmental agreement with Union law. In particular, intergovernmental agreements often contain no appropriate termination or adaptation clauses which would allow Member States to bring the intergovernmental agreement in compliance with Union law within a reasonable period of time. Furthermore, the positions of the signatories have already been fixed, which creates political pressure not to change any aspect of the agreement.</p>		<p>994/2012/EU proved ineffective in terms of ensuring compliance of intergovernmental agreements with Union law. That Decision mainly relied on the assessment of intergovernmental agreements by the Commission after they were concluded by the Member States with a third country. Experience gained in the implementation of the Decision 994/2012/EU demonstrated that such an ex-post assessment does not fully exploit the potential for ensuring compliance of intergovernmental agreement with Union law. In particular, intergovernmental agreements often contain no appropriate termination or adaptation clauses which would allow Member States to bring the intergovernmental agreement in compliance with Union law within a reasonable period of time. Furthermore, the positions of the signatories have already been fixed, which creates political pressure not to change any aspect of the agreement.</p>	
	<p>(4a) A high degree of transparency with regard to agreements between Member States and third countries in the field of energy allows the Union to take coordinated action, in the spirit of solidarity, in order to ensure that such agreements comply with Union law and effectively secure energy supply. Such transparency should also be of benefit in achieving both</p>		

	<p><i>closer intra-Union cooperation in the field of external energy relations and the Union's long-term policy objectives relating to energy, climate and security of energy supply.</i></p>		
<p>(5) In order to avoid any incompatibility with Union law and enhance transparency, Member States should inform the Commission of their intent to enter into negotiations with regard to new intergovernmental agreements or amendments to existing intergovernmental agreements as soon as possible. The Commission should be kept informed regularly of the progress of the negotiations. Member States should have the possibility to invite the Commission to participate in the negotiations as an observer.</p>	<p>(5) In order to avoid any incompatibility with Union law and enhance transparency, Member States should inform the Commission of their intent to enter into negotiations with regard to new intergovernmental agreements or amendments to existing intergovernmental agreements as soon as possible. The Commission should be kept informed regularly of the progress of the negotiations. The Commission should participate in the negotiations as an observer if it considers this to be necessary in light of the functioning of the internal energy market or the security of energy supply in the Union. Member States should, in any case, have the possibility to invite the Commission to participate in the negotiations as an observer.</p> <p>Amendment AFET 6 (to be merged with previous amendment on the same text) :</p> <p>(5) In order to avoid any incompatibility with Union law and provisions on Union energy security, and to enhance transparency, Member States should inform the Commission of their intent to enter into negotiations</p>	<p>(5) In order to avoid any incompatibility with Union law and enhance transparency, Member States should inform the Commission of their intent to enter into negotiations with regard to new intergovernmental agreements or amendments to [] intergovernmental agreements as soon as possible. The Commission should be kept informed regularly of the progress of the negotiations. Member States should have the possibility to invite the Commission to participate in the negotiations as an observer.</p>	

<p>(6) During the negotiations the Commission should have the possibility to advise on how to avoid incompatibility with Union law. In particular, the Commission could develop, together with Member States, optional model clauses or guidelines. The Commission should have the possibility to draw attention to the Union's energy policy objectives and the principle of solidarity between Member States and Union policy positions adopted in Council or European Council conclusions.</p>	<p>with regard to new intergovernmental agreements or amendments to existing intergovernmental agreements as soon as possible. The Commission should be kept informed regularly and adequately of the progress of the negotiations. Member States should have the possibility to invite the Commission to participate in the negotiations as an observer.</p> <p>(6) During the negotiations of an intergovernmental agreement the Commission shall advise the Member State(s) concerned on how to ensure compliance with Union law. In particular, the Commission should develop, together with Member States, optional model clauses or guidelines and examples of draft clauses that in principle should be avoided. Such model clauses or guidelines should serve as a tool of reference for the competent authorities and increase transparency and compliance with Union law. The Commission should have the possibility to draw attention of the Member State(s) concerned to the relevant Union's energy policy objectives and the principle of solidarity between Member States and Union policy positions adopted in Council or European Council conclusions.</p>	<p>(6) During the negotiation[] of an intergovernmental agreement, the Commission should have the possibility to advise the Member State(s) concerned on how to avoid incompatibility with Union law. [] In this framework, the Commission should also have the possibility to draw the attention of the Member State(s) concerned to the Union's energy policy objectives and the principle of solidarity between Member States and Union policy positions adopted in Council or European Council conclusions where relevant; however, this should not form part of the legal assessment of the Commission of the draft intergovernmental agreement or amendment. []</p>	
<p>(7) In order to ensure compliance with Union law, Member States should notify the draft intergovernmental</p>	<p>(7) In order to ensure compliance with Union law and respect the objectives of the Energy Union</p>	<p>(7) In order to ensure compliance with Union law, and having due regard to the fact that currently,</p>	

<p>agreement to the Commission before it becomes legally binding for the parties (ex-ante). In a spirit of cooperation, the Commission should support the Member State in identifying compliance issues of the draft intergovernmental agreement or amendment. The respective Member State would then be better prepared to conclude a Union law compliant agreement. The Commission should have sufficient time for such an assessment in order to provide for as much legal certainty as possible while avoiding undue delays. In order to fully benefit from the Commission's support Member States should refrain from concluding an intergovernmental agreement until the Commission has informed the Member State of its assessment. The Member States should take all necessary steps to find a suitable solution to eliminate the incompatibility identified.</p>	<p>Strategy Member States should notify the draft intergovernmental agreement to the Commission <i>as early as possible</i>, before it becomes legally binding for the parties (ex-ante). In a spirit of cooperation, the Commission should support the Member State in identifying <i>potential</i> compliance issues of the draft intergovernmental agreement or amendment. The respective Member State would then be better prepared to conclude a Union law compliant agreement. The Commission should have sufficient time for such an assessment in order to provide for as much legal certainty as possible while avoiding undue delays. The Commission should consider shortening the periods provided for its assessment, in particular if a Member States so requests. In order to fully benefit from the Commission's support Member States should refrain from concluding an intergovernmental agreement until the Commission has informed the Member State of its assessment. Such an assessment should not prejudice the substance or content of intergovernmental agreements, but should ensure that they comply with Union law. In the event of incompatibility, Member States should find a suitable solution to eliminate the incompatibility identified.</p>	<p>intergovernmental agreements or amendments in the area of gas have the largest relative repercussions on the proper functioning of the internal energy market and on the Union's security of energy supply, Member States should notify the draft intergovernmental agreement relating to gas to the Commission before it becomes legally binding for the parties (ex-ante). In a spirit of cooperation, the Commission should support the Member State in identifying compliance issues of the draft intergovernmental agreement or amendment. The respective Member State would then be better prepared to conclude a Union law compliant agreement.</p>	
		(7a) The Commission should have	

		<p>sufficient time for such an assessment in order to provide for as much legal certainty as possible while avoiding undue delays. The Commission should consider shortening the periods foreseen for its assessment if appropriate, in particular if a Member State requests this or if a Member State has kept the Commission informed in sufficient detail during the negotiation phase, and having regard to the extent to which the draft intergovernmental agreement or amendment is based on model clauses. In order to fully benefit from the Commission's support Member States should refrain from concluding an intergovernmental agreement relating to gas, or an intergovernmental agreement relating to types of energy other than gas in case a Member State has chosen to request the <i>ex ante</i> assessment by the Commission, until the Commission has informed the Member State of its assessment. The Member States should take all necessary steps to reach <input type="checkbox"/> a suitable solution to eliminate the incompatibility identified.</p>	
<p>(8) In light of the Energy Union Strategy, transparency with regard to past and future intergovernmental agreements continues to be of utmost importance. Therefore, Member States should continue notifying to the</p>	<p>(8) In light of the Energy Union Strategy, transparency with regard to past and future intergovernmental agreements continues to be of utmost importance and is an important element in ensuring the Union's</p>	<p>(8) In light of the Energy Union Strategy, transparency with regard to past and future intergovernmental agreements continues to be of utmost importance. Therefore, Member States should continue notifying to the</p>	

<p>Commission existing and future 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 new intergovernmental agreements.</p>	<p>energy stability. Therefore, Member States should continue notifying to the Commission existing and future 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 new intergovernmental agreements.</p>	<p>Commission existing and future 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 new intergovernmental agreements.</p>	
<p>(9) The Commission should assess the compatibility with Union law of intergovernmental agreements that entered into force or are applied provisionally prior to the entry into force of this Decision and inform the Member States accordingly. In the event of incompatibility, Member States should take all necessary steps to find a suitable solution to eliminate the incompatibility identified.</p>	<p>(9) The Commission should assess the compatibility of intergovernmental agreements with Union law that entered into force or are applied provisionally prior to the entry into force of this Decision and inform the Member States accordingly. Such an assessment should not in any way prejudice the substance and content of agreements, but ensure they are compliant with Union law. In the event of incompatibility, Member States should eliminate the incompatibility identified.</p>	<p>(9) The Commission should assess the compatibility with Union law of intergovernmental agreements that entered into force or are applied provisionally prior to the entry into force of this Decision and inform the Member States accordingly. In the event of incompatibility, Member States should take all necessary steps to reach <input type="checkbox"/> a suitable solution to eliminate the incompatibility identified.</p>	
<p>(10) This Decision should only apply to intergovernmental agreements that have an impact on the internal energy market or the security of supply in the Union. In case of doubt, Member States should consult the Commission. In principle, agreements that are no longer in force or are no longer applied do not have an impact on the internal energy market or on the security of energy supply in the Union and should therefore not be covered by</p>	<p>(10) This Decision should only apply to intergovernmental agreements that have a potential impact on the internal energy market or the security of energy supply in the Union. It may concern the purchase, trade, transit, sale, storage or supply of energy in or to at least one Member State, or the construction or operation of energy infrastructure with a physical connection to at least one Member State. In case of doubt Member States</p>	<p>(10) This Decision should <input type="checkbox"/> apply to intergovernmental agreements; these express, in particular by their content, the intention of the parties that the agreement should have binding force, entirely or in part, and regardless of its formal designation. <input type="checkbox"/> Only those intergovernmental agreements that concern the purchase, trade, sale, storage or supply of energy in or to at least one Member State, or the</p>	

<p>this Decision.</p>	<p>should consult the Commission <i>without delay</i>. In principle, agreements that are no longer in force or are no longer applied should therefore not be covered by this Decision.</p>	<p>construction or operation of energy infrastructure with a physical connection to at least one Member State should be notified. <input type="checkbox"/> In case of doubt, Member States should consult the Commission. In principle, agreements that are no longer in force or are no longer applied <input type="checkbox"/> should <input type="checkbox"/> not be covered by this Decision</p>	
<p>(11) Member States establish relations to third countries not only by concluding intergovernmental agreements, but also in the form of non-binding instruments. Even if legally non-binding, such instruments can be used to set out a detailed framework for energy infrastructure and energy supply. In this respect non-binding instruments can have similar impacts on the internal energy market as intergovernmental agreements as their implementation might result in a violation of Union law. In order to ensure greater transparency regarding all measures applied by Member States that can have an impact on the internal energy market and energy security, Member States should therefore submit</p>	<p><i>(10a) The legally binding force of an instrument, or of parts thereof, not its formal designation, qualifies it as an intergovernmental agreement or, in the absence of legally binding force, as a non-binding instrument for the purposes of this Decision.</i></p>	<p>(10a) It is the legally binding force of an instrument (or of parts thereof), not its formal designation, that qualifies it as an intergovernmental agreement or, in the absence of such legally binding force, as a non-binding instrument for the purposes of this Decision.</p>	
<p>(11) Member States establish relations to third countries not only by concluding intergovernmental agreements, but also in the form of non-binding instruments. Even if legally non-binding, such instruments can be used to set out a detailed framework for energy infrastructure and energy supply. In this respect non-binding instruments can have similar impacts on the internal energy market as intergovernmental agreements as their implementation might result in a violation of Union law. In order to ensure greater transparency regarding all measures applied by Member States that can have an impact on the internal energy market and energy security, Member States should therefore submit</p>	<p>(11) Member States establish relations to third countries not only by concluding intergovernmental agreements, but also in the form of non-binding instruments. Even if legally non-binding, such instruments can be used to set out a detailed framework for energy infrastructure and energy supply. In this respect non-binding instruments can have similar impacts on the internal energy market as intergovernmental agreements as their implementation might result in a violation of Union law. In order to ensure greater transparency regarding all measures applied by Member States that can have an impact on the internal energy market and energy security, Member States should therefore submit</p>	<p>(11) Member States establish relations to third countries not only by concluding intergovernmental agreements, but also in the form of non-binding instruments, which are often formally designated by terms such as memorandum of understanding, joint declaration, ministerial joint declaration, joint action or joint code of conduct. Even if legally non-binding, such instruments can be used to set out a detailed framework for energy infrastructure and energy supply. <input type="checkbox"/> In the interest of greater transparency, Member States may submit to the Commission non-binding instruments - i.e. legally non-binding arrangements between one or more</p>	

<p>to the Commission, ex post, also the respective non-binding instruments. The Commission should assess the submitted non-binding instruments and, if appropriate, inform the Member State accordingly.</p>	<p>to the Commission, <i>ex-ante</i>, also the respective non-binding instruments. The Commission should assess the submitted non-binding instruments and, if appropriate, inform the Member State accordingly.</p>	<p>Member States and one or more third countries which set conditions for energy supply or for the development of energy infrastructures, e.g. by containing interpretations of Union law - or the amendment of such a non-binding instrument, including any annexes thereto; if the non-binding instrument or amendment refers explicitly to other texts, the Member State may also submit those other texts.</p>	
<p>(12) Intergovernmental agreements or non-binding instruments which need to be notified in their entirety to the Commission on the basis of other Union acts or concern matters such as within the purview of the Treaty establishing the European Atomic Energy Community should not be covered by this Decision.</p>	<p>(12) Intergovernmental agreements or non-binding instruments which need to be notified in their entirety to the Commission on the basis of other Union acts or concern matters [/] within the purview of the Treaty establishing the European Atomic Energy Community should not be covered by this Decision.</p>	<p>(12) Intergovernmental agreements or non-binding instruments which need to be notified in their entirety to the Commission on the basis of other Union acts or concern matters [] within the purview of the Treaty establishing the European Atomic Energy Community should not be covered by this Decision.</p>	
<p>(13) This Decision should not create obligations as regards agreements between undertakings. However, Member States should be free to communicate to the Commission, on a voluntary basis, such agreements that are referred to explicitly in intergovernmental agreements or non-binding instruments.</p>	<p>(13) This Decision should not create obligations as regards agreements that are concluded solely between undertakings. However, Member States should be obliged to communicate to the Commission such agreements that are referred to explicitly in intergovernmental agreements or non-binding instruments, while fully respecting commercially sensitive information.</p>	<p>(13) This Decision should not create obligations as regards agreements between undertakings. However, Member States should be free to communicate to the Commission, on a voluntary basis, such agreements that are referred to explicitly in intergovernmental agreements or non-binding instruments.</p>	
<p>(14) The Commission should make information it receives available to all other Member States in secure</p>	<p>(14) The Commission should make information it receives on intergovernmental agreements and</p>	<p>(14) The Commission should make information it receives available to all other Member States in secure</p>	

<p>electronic form. The Commission should respect requests from Member States to treat information submitted to it as confidential. Requests for confidentiality should, however, not restrict access of the Commission itself to confidential information, as the Commission needs to have comprehensive information for its own assessments. The Commission should be responsible for guaranteeing the application of the confidentiality clause. 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 Council⁹.</p>	<p><i>non-binding instruments</i> available to all other Member States in secure electronic form <i>in order to enhance coordination and transparency between Member States and thus leveraging their negotiation power vis-à-vis third countries</i>. The Commission should respect requests from Member States to treat information submitted to it as confidential. Requests for confidentiality should, however, not restrict access of the Commission itself to confidential information, as the Commission needs to have comprehensive information for its own assessments. The Commission should be responsible for guaranteeing the application of the confidentiality clause. 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 Council¹¹.</p> <p>Amendment INTA 4 (to be merged with previous amendment on the same text) : (14) The Commission should make information it receives available to all other Member States in secure</p>	<p>electronic form. The Commission should respect requests from Member States to treat information submitted to it as confidential. Requests for confidentiality should, however, not restrict access of the Commission itself to confidential information, as the Commission needs to have comprehensive information for its own assessments. The Commission should be responsible for guaranteeing the application of the confidentiality clause. 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 Council⁸.</p>
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⁹ 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 (OJ L 299, 27.10.2001, p. 13).

<p>(15) If a Member State considers an intergovernmental agreement 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.</p>	<p>electronic form. The Commission should respect requests from Member States to treat information submitted to it as confidential in order to maintain the level of confidentiality needed to safeguard the interests of the Member States during the negotiations with the other party. Requests for confidentiality should, however, not restrict access of the Commission itself to confidential information, as the Commission needs to have comprehensive information for its own assessments. The Commission should be responsible for guaranteeing the application of the confidentiality clause. 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 Council¹¹.</p>		
<p>(16) A permanent exchange of information on intergovernmental agreements at Union level should enable best practices to be developed. On the basis of those best practices, the</p>	<p>(15) If a Member State considers an intergovernmental agreement to be confidential, it should provide the Commission with a summary containing its main elements and relevant clauses, including restrictions, for the purposes of sharing that summary with the other Member States.</p>	<p>(15) If a Member State considers an intergovernmental agreement [] 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.</p>	
<p>(16) A permanent exchange of information on intergovernmental agreements at Union level should enable best practices to be developed. On the basis of those best practices, the</p>	<p>(16) A permanent exchange of information on intergovernmental agreements at Union level should enable best practices to be developed. On the basis of those best practices, the</p>	<p>(16) A permanent exchange of information on intergovernmental agreements at Union level should enable best practices to be developed. On the basis of those best practices, the</p>	

<p>Commission, where appropriate in cooperation with the European External Action Service as regards the Union's external policies, should develop optional model clauses to be used in intergovernmental agreements between Member States and third countries. The use of such model clauses should aim to avoid conflicts of intergovernmental agreements with Union law, in particular internal energy market rules and competition law, and conflicts with international agreements concluded by the Union. Their use should be optional, and it should be possible to adapt their content to any particular circumstance.</p>	<p>Commission, <i>in cooperation with Member States, and</i> where appropriate in cooperation with the European External Action Service as regards the Union's external policies, should develop optional model clauses to be used in intergovernmental agreements between Member States and third countries, <i>as well as a list of examples of clauses that do not respect Union law or the objectives of the Energy Union that should in principle be avoided</i>. The use of such model clauses should <i>ensure compliance</i> of intergovernmental agreements with Union law and conflicts with international agreements concluded by the Union. Their use should be optional, and it should be possible to adapt their content <i>and structure</i> to any particular circumstance.</p>	<p>Commission, in cooperation with Member States, and where appropriate in cooperation with the European External Action Service as regards the Union's external policies, should develop optional model clauses, to be used in intergovernmental agreements between Member States and third countries, as well as guidance, including a list of examples of clauses that do not respect Union law and should therefore not be used. The use of such model clauses should aim to avoid conflicts of intergovernmental agreements with Union law, in particular internal energy market rules and competition law, and conflicts with international agreements concluded by the Union. Their use should be optional, and it should be possible to adapt their content to any particular circumstance.</p>	
<p>(17) The improved mutual knowledge of existing and new intergovernmental agreements and non-binding instruments should allow for better coordination in energy matters between Member States and the Commission. Such improved coordination should enable Member States to benefit fully from the political and economic weight of the Union and enable the Commission to propose solutions for problems identified in the</p>	<p>(17) The improved mutual knowledge of existing and new intergovernmental agreements and non-binding instruments should <i>enhance transparency and</i> coordination in energy matters between Member States and between Member States and the Commission. <i>Enhanced transparency and coordination is especially important for Member States relying on the interconnections with a Member State negotiating an intergovernmental</i></p>	<p>(17) The improved mutual knowledge of existing and new intergovernmental agreements [] should allow for better coordination in energy matters between Member States and between Member States and the Commission. Such improved coordination should enable Member States to benefit fully from the political and economic weight of the Union and enable the Commission to propose solutions for problems identified in the area of intergovernmental agreements.</p>	

<p>area of intergovernmental agreements.</p>	<p>agreement. Such improved coordination should enable Member States to benefit fully from the political and economic weight of the Union, increase their negotiation power vis-à-vis third countries and enable the Commission to ensure security of energy supply in the Union.</p>		
<p>(18) The Commission should facilitate and encourage coordination between Member States with a view to enhancing the overall strategic role of the Union through a strong and effective coordinated approach to producer, transit, and consumer countries.</p>	<p>(18) The Commission should facilitate and encourage coordination between Member States with a view to enhancing the overall strategic role of the Union in the field of energy through a well-defined and effective long-term coordinated approach to producer, transit, and consumer countries.</p> <p>Amendment INTA 7 (to be merged with previous amendment on the same text) :</p> <p>(18) The Commission should facilitate and encourage coordination between Member States with a view to enhancing the overall strategic role of the Union through a strong and effective coordinated approach to producer, transit, and consumer countries, including with a view to ensuring consistency between the principles of Union energy policy and the common commercial policy.</p>	<p>(18) The Commission should facilitate and encourage coordination between Member States with a view to enhancing the overall strategic role of the Union through a strong and effective coordinated approach to producer, transit, and consumer countries.</p>	
<p>(19) Since the objective of this Decision, namely the exchange of information between Member States and the Commission with regard to</p>		<p>(19) Since the objective of this Decision, namely the exchange of information between Member States and the Commission with regard to</p>	

<p>intergovernmental agreements and non-binding instruments 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 measures, 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 this objective.</p>		<p>intergovernmental agreements <input type="checkbox"/> 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 measures, 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 this objective.</p>	
<p>(20) The provisions of this Decision should be without prejudice to the application of the Union rules on infringements, State aid and competition. In particular, the Commission has the right to launch infringement proceedings in accordance with Article 258 of the Treaty on the Functioning of the European Union (TFEU), where it considers that a Member State has failed to fulfil its obligations under the TFEU.</p>		<p>(20) The provisions of this Decision should be without prejudice to the application of the Union rules on infringements, state aid and competition. In particular, the Commission has the right to launch infringement proceedings in accordance with Article 258 of the Treaty on the Functioning of the European Union (TFEU), where it considers that a Member State has failed to fulfil its obligations under the TFEU.</p>	
<p>(21) In 2020, the Commission should assess whether this Decision is sufficient and effective in ensuring compliance of intergovernmental agreements with Union law and that a high level of coordination exists</p>		<p>(21) <input type="checkbox"/>The Commission should assess whether this Decision is sufficient and effective in ensuring compliance of intergovernmental agreements with Union law and <input type="checkbox"/> a high level of coordination <input type="checkbox"/> between</p>	

between Member States with regard to intergovernmental agreements in the field of energy.	Member States with regard to intergovernmental agreements in the field of energy.		
(22) Decision No 994/2012/EU should be repealed.	(22) Decision No 994/2012/EU should therefore be repealed		
HAVE ADOPTED THIS DECISION:	HAVE ADOPTED THIS DECISION:		
<i>Article 1</i>	<i>Article 1</i>		
Subject matter and scope	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 and non-binding instruments in the field of energy as defined in Article 2, in order to optimise the functioning of the internal energy market.	1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements in the field of energy as defined in Article 2, in order to optimise the functioning of the internal energy market and to ensure the security of supply to the Union.	1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements and non-binding instruments in the field of energy as defined in Article 2, in order to optimise the functioning of the internal energy market and to ensure the security of supply to the Union.	1. This Decision establishes a mechanism for the exchange of information between Member States and the Commission with regard to intergovernmental agreements in the field of energy as defined in Article 2, in order to ensure the functioning of the internal energy market and enhance the security of energy supply in the Union.
2. This Decision shall not apply to intergovernmental agreements and non-binding instruments which are already, in their entirety, subject to other specific notification procedures under Union law.	2. This Decision shall not apply to intergovernmental agreements which are already, in their entirety, subject to other specific notification procedures under Union law.	2. This Decision shall not apply to intergovernmental agreements and non-binding instruments in the field of energy as defined in Article 2, in order to optimise the functioning of the internal energy market and to help achieve the goals of the Energy Union Strategy.	2. This Decision shall not apply to intergovernmental agreements which are already, in their entirety, subject to other specific notification procedures under Union law.

<p><i>Article 2</i> Definitions</p> <p>For the purposes of this Decision the following definitions shall apply:</p>	<p>(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 energy market or on the security of energy supply in the Union; however, where such a legally binding agreement also covers other issues, only those provisions that relate to energy, including general provisions applicable to those energy-related provisions, are deemed to constitute an ‘intergovernmental agreement’;</p>	<p>(1) ‘intergovernmental agreement’ means any legally binding agreement, regardless of its formal designation, between one or more Member States and one or more third countries, international organisations as well as third-country undertakings where the third-country state is the major stakeholder or has a directing or controlling influence in the decision making process, having a potential impact on the operation or the functioning of the internal energy market or on the security of energy supply in the Union. It may concern the purchase, trade, sale, transit, storage or supply of energy in or to at least one Member State, or the construction or operation of energy infrastructure with a physical connection to at least one Member State; however, where such a legally binding agreement also covers other issues, only those provisions that relate to energy, including general provisions applicable to those energy-related provisions, are deemed to constitute an ‘intergovernmental agreement’;</p>	<p><i>Article 2</i> Definitions</p> <p>For the purposes of this Decision the following definitions shall apply:</p> <p>(1) ‘intergovernmental agreement’ means any legally binding agreement, regardless of its formal designation, between one or more Member States and one or more third countries <input type="checkbox"/> that concerns:</p> <p>(i) the purchase, trade, sale, storage or supply of energy in or to at least one Member State, or</p> <p>(ii) the construction or operation of energy infrastructure with a physical connection to at least one Member State;</p> <p>however, where such a legally binding agreement also covers other issues, only <input type="checkbox"/> the provisions related to the aforementioned energy issues and the <input type="checkbox"/> general provisions applicable to those energy-related provisions are deemed to constitute an ‘intergovernmental agreement’;</p> <p>(2) ‘existing intergovernmental agreement’ means an intergovernmental agreement which</p>
<p>(1) ‘intergovernmental agreement’ means any legally binding agreement, regardless of its formal designation, between one or more Member States and one or more third countries, international organisations as well as third-country undertakings where the third-country state is the major stakeholder or has a directing or controlling influence in the decision making process, having a potential impact on the operation or the functioning of the internal energy market or on the security of energy supply in the Union. It may concern the purchase, trade, sale, transit, storage or supply of energy in or to at least one Member State, or the construction or operation of energy infrastructure with a physical connection to at least one Member State; however, where such a legally binding agreement also covers other issues, only those provisions that relate to energy, including general provisions applicable to those energy-related provisions, are deemed to constitute an ‘intergovernmental agreement’;</p>	<p>(1) ‘intergovernmental agreement’ means any legally binding agreement, regardless of its formal designation, between one or more Member States and one or more third countries, international organisations as well as third-country undertakings where the third-country state is the major stakeholder or has a directing or controlling influence in the decision making process, having a potential impact on the operation or the functioning of the internal energy market or on the security of energy supply in the Union. It may concern the purchase, trade, sale, transit, storage or supply of energy in or to at least one Member State, or the construction or operation of energy infrastructure with a physical connection to at least one Member State; however, where such a legally binding agreement also covers other issues, only those provisions that relate to energy, including general provisions applicable to those energy-related provisions, are deemed to constitute an ‘intergovernmental agreement’;</p>	<p>(2) ‘existing intergovernmental agreement’ means an intergovernmental agreement which</p>	

<p>entered into force or is applied provisionally prior to the entry into force of this Decision;</p>		<p>entered into force or is applied provisionally prior to the entry into force of this Decision;</p>	
<p>(3) 'non-binding instrument' means a legally non-binding arrangement between one or more Member States and one or more third countries, such as a memorandum of understanding, joint declaration, ministerial joint declaration, joint action or joint code of conduct, which contains interpretation of Union law, sets the conditions for energy supply (such as volumes and prices) or the development of energy infrastructures;</p>	<p>(3) 'non-binding instrument' means a legally non-binding arrangement between one or more Member States and one or more third countries, such as a memorandum of understanding, joint declaration, joint ministerial joint declaration, joint action or joint code of conduct, which contains interpretation of Union law, sets the conditions for energy supply (such as volumes and prices) or the development <i>or operation</i> of energy infrastructures;</p>	<p><input type="checkbox"/></p>	
<p>(4) 'existing non-binding instrument' means a non-binding instrument signed or otherwise agreed prior to the entry into force of this Decision.</p>		<p><input type="checkbox"/></p>	
<p><i>Article 3</i> Notification obligations with respect to intergovernmental agreements</p>		<p><i>Article 3</i> Notification obligations with respect to intergovernmental agreements</p>	
<p>1. 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.</p>		<p>1. When a Member State intends to enter into negotiations with a third country in order to amend an <input type="checkbox"/> 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.</p>	
<p>Where the Member State gives the Commission such notice of</p>	<p>Once the Member State <i>has given</i> the Commission such notice of</p>	<p><input type="checkbox"/> The Member State concerned should keep the Commission regularly</p>	

<p>negotiations, the Member State concerned should keep the Commission regularly informed of the progress of the negotiations.</p>	<p>negotiations, the Member State concerned <i>shall</i> keep the Commission regularly informed of the progress of the negotiations.</p>	<p>informed of the progress of the negotiations.</p>	
<p>2. As soon as an agreement has been reached by the parties on all the main elements of a draft intergovernmental agreement or an amendment to an existing intergovernmental agreement, but before the closure of formal negotiations, the Member State concerned shall notify to the Commission this draft agreement or amendment together with any annexes thereto for ex-ante assessment in accordance with Article 5.</p>		<p>2. As soon as an agreement has been reached by the parties on all the main elements of a draft intergovernmental agreement relating to gas or an amendment to an <input type="checkbox"/> intergovernmental agreement relating to gas, but before the closure of formal negotiations, the Member State concerned shall notify to the Commission that <input type="checkbox"/> draft agreement or amendment together with any annexes thereto for ex-ante assessment in accordance with Article 5.</p>	
<p>Where the draft intergovernmental agreement or amendment to an existing intergovernmental agreement refers explicitly to other texts, the respective Member State shall also submit those other texts in so far as they contain elements which may have an impact on the functioning of the internal energy market or on the security of energy supply in the Union.</p>		<p>Where that <input type="checkbox"/> draft <input type="checkbox"/> agreement or amendment <input type="checkbox"/> refers explicitly to other texts, the respective Member State shall also submit those other texts in so far as they contain elements which <input type="checkbox"/> concern the purchase, trade, sale, storage or supply of gas in or to at least one Member State or the construction or operation of gas infrastructure with a physical connection to at least one Member State.</p>	
		<p>Furthermore, where a Member State is negotiating an intergovernmental agreement or amendment relating to types of energy other than gas and it has been unable, on the basis of its own assessment, to reach a firm conclusion as to the compatibility of</p>	

		<p>the intergovernmental agreement or amendment under negotiation with Union law, it shall notify to the Commission this draft agreement or amendment together with any annexes thereto for <i>ex ante</i> assessment in accordance with Article 5, as soon as an agreement has been reached by the parties on all the main elements of that draft intergovernmental agreement or that amendment to an intergovernmental agreement, but before the closure of formal negotiations.</p>	
		<p>2a. Member States may make use of the <input type="checkbox"/> first <input type="checkbox"/> and second subparagraphs of paragraph 2 for intergovernmental agreements or amendments relating to types of energy other than gas.</p>	
	<p><i>2a (new). The information provided to the Commission shall include indications of the provisions to be addressed in the negotiations, the objectives of the negotiations and other relevant information in accordance with confidentiality provisions as set out Article 8.</i></p>		
	<p><i>2b (new). The Commission shall make the information received, with the exception of confidential parts identified according to Article 8, along with their note regarding the incompatibility with Union law, if any, accessible to all Member States</i></p>		

<p>3. Upon ratification of an intergovernmental agreement or of an amendment to an intergovernmental agreement, the Member State concerned shall notify the intergovernmental agreement or the amendment, including any annexes thereto, to the Commission.</p>	<p><i>in order to ensure that the objectives of the Energy Union are achieved.</i></p>	<p>3. Upon ratification of an intergovernmental agreement or of an amendment to an intergovernmental agreement, the Member State concerned shall notify the intergovernmental agreement or the amendment, including any annexes thereto, to the Commission.</p>	
<p>Where the ratified intergovernmental agreement or amendment to the intergovernmental agreement refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain elements which may have an impact on the functioning of the internal energy market or on the security of energy supply in the Union.</p>	<p>Where the ratified intergovernmental agreement or amendment to the intergovernmental agreement refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain any of the elements listed in point 1 of Article 2(1).</p>	<p>Where the ratified intergovernmental agreement or amendment to the intergovernmental agreement refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain elements which [] concern the purchase, trade, sale, storage or supply of energy in or to at least one Member State or the construction or operation of energy infrastructure with a physical connection to at least one Member State.</p>	
<p>4. The obligation to notify to the Commission according to paragraphs 2 and 3 does not apply in respect of agreements between undertakings.</p>	<p>4. The obligation to notify to the Commission according to paragraphs 2 and 3 does not apply in respect of agreements that are concluded solely between undertakings</p> <p><i>In the case of doubt as to whether an agreement constitutes an intergovernmental agreement or an existing intergovernmental agreement under this Decision and thus whether it is to be notified in accordance with Articles 3 and 6, Member States shall</i></p>	<p>4. The obligation to notify to the Commission according to paragraphs 2 and 3 does not apply in respect of agreements between undertakings.</p>	

<p>5. All notifications pursuant to paragraphs 1 to 3 of this Article, Article 6(1) and (2) and Article 7(1) and (2) shall be made through a web-based application provided by the Commission. The periods referred to in Article 5(1) and (2) and Article 6(3) shall start to run on the date when the complete notification file has been registered in the application.</p>	<p><i>consult the Commission without delay.</i></p>	<p>5. All notifications pursuant to paragraphs 1 to 3 of this Article and Article 6(1) and (2) [] shall be made through a web-based application provided by the Commission. The periods referred to in Article 5(1) and (2) and Article 6(3) shall start to run on the date when the complete notification file has been registered in the application.</p>	
<p><i>Article 4</i> Assistance from the Commission</p> <p>1. Where a Member State gives the Commission notice of negotiations pursuant to Article 3(1), the Commission services may provide it with advice on how to avoid the incompatibility of the intergovernmental agreement or of the amendment to an existing intergovernmental agreement under negotiation with Union law. That Member State may also request the assistance of the Commission in those negotiations.</p>	<p>1. Where a Member State gives the Commission notice of negotiations pursuant to Article 3(1), the Commission services <i>shall</i> provide it with advice on how to <i>ensure that</i> the intergovernmental agreement or of the amendment to an existing intergovernmental agreement under negotiation, <i>comply with Union law and the Union's energy security objectives.</i></p> <p><i>Amendment AFET 15 (to be merged with previous amendment on the same text) :</i></p> <p>1. Where a Member State gives the Commission notice of negotiations pursuant to Article 3(1), the Commission services may provide it with advice and guidelines on how to avoid the incompatibility of the intergovernmental agreement or of the</p>	<p><i>Article 4</i> Assistance from the Commission</p> <p>1. Where a Member State gives the Commission notice of negotiations pursuant to Article 3(1), the Commission services may provide it with advice on how to avoid the incompatibility of the intergovernmental agreement or of the amendment to an [] intergovernmental agreement under negotiation with Union law. That Member State may also request the assistance of the Commission in those negotiations.</p>	

	amendment to an existing intergovernmental agreement under negotiation with Union law. That Member State may also request the assistance of the Commission in those negotiations.		
2. At the request of the Member State concerned, or at the request of the Commission and with the written approval of the Member State concerned, the Commission may participate in the negotiations as an observer.	2. <i>If deemed necessary by the Commission in view of the functioning of the internal energy market or the security of energy supply in the Union, it shall participate in the negotiations as an observer without limiting Member States' freedom of negotiations. A Member State concerned may also voluntarily request the assistance of the Commission in the negotiations.</i>	2. At the request of the Member State concerned, or at the request of the Commission and with the written approval of the Member State concerned, the Commission may participate in the negotiations as an observer.	
3. Where the Commission participates in the negotiations as an observer, it may provide the Member State concerned with advice on how to avoid the incompatibility of the intergovernmental agreement or amendment under negotiation with Union law.	3. <i>In the course of the negotiations, the Commission shall provide the Member State concerned with advice on how to ensure that the intergovernmental agreement or amendment under negotiation complies with Union law and respects Energy Union objectives. Commission representatives will handle sensitive information received during the negotiations with due confidentiality.</i>	3. Where the Commission participates in the negotiations as an observer, it may provide the Member State concerned with advice on how to avoid the incompatibility of the intergovernmental agreement or amendment under negotiation with Union law.	
Article 5 Assessment by the Commission		Article 5 Assessment by the Commission	
1. The Commission shall, within six weeks of the date of notification of the complete draft intergovernmental agreement or amendment, including annexes thereto, pursuant to Article 3(2), inform the Member State	1. The Commission shall, within four weeks of the date of notification of the complete draft intergovernmental agreement or amendment, including annexes thereto, pursuant to Article 3(2), inform the	1. The Commission shall, within six weeks of the date of notification of the complete draft intergovernmental agreement or amendment, including annexes thereto, pursuant to Article 3(2) or (2a), inform the Member State	

<p>concerned of any doubts it may have as to the compatibility of the draft intergovernmental agreement or amendment with Union law, in particular with internal energy market legislation and Union competition law. In the absence of a response from the Commission within that period, the Commission shall be deemed not to have any such doubts.</p>	<p>Member State concerned of any doubts it may have as to the compatibility of the draft intergovernmental agreement or amendment with Union law [J. In the absence of a response from the Commission within that period, the Commission shall be deemed not to have any such doubts.</p>	<p>concerned of any doubts it may have as to the compatibility of the draft intergovernmental agreement or amendment with Union law, in particular with internal energy market legislation and Union competition law. In the absence of a response from the Commission within that period, the Commission shall be deemed not to have any such doubts.</p>	
<p>2. Where the Commission informs the Member State concerned pursuant to paragraph 1 that it has doubts, it shall inform the Member State concerned of its opinion on the compatibility with Union law, in particular with internal energy market legislation and Union competition law, of the draft intergovernmental agreement or amendment concerned within 12 weeks of the date of notification referred to in paragraph 1. In the absence of an opinion from the Commission within that period, the Commission shall be deemed not to have raised any objections.</p>	<p>2. Where the Commission informs the Member State concerned pursuant to paragraph 1 that it <i>finds the intergovernmental agreement or amendment to be incompatible</i> with Union law, <i>it shall provide the Member State with a detailed opinion</i> within 12 weeks of the date of notification referred to in paragraph 1. In the absence of an opinion from the Commission within that period, the Commission shall be deemed not to have raised any objections.</p>	<p>2. Where the Commission informs the Member State concerned pursuant to paragraph 1 that it has doubts, it shall inform the Member State concerned of its opinion on the compatibility with Union law, in particular with internal energy market legislation and Union competition law, of the draft intergovernmental agreement or amendment concerned within 12 weeks of the date of notification referred to in paragraph 1. In the absence of an opinion from the Commission within that period, the Commission shall be deemed not to have raised any objections.</p>	
<p>3. With the approval of the Member State concerned, the periods referred to in paragraphs 1 and 2 may be extended. The periods referred to in paragraphs 1 and 2 shall be shortened in agreement with the Commission if circumstances so warrant.</p>	<p>3. With the approval of the Member State concerned, the periods referred to in paragraphs 1 and 2 may be extended. The periods referred to in paragraphs 1 and 2 shall be shortened in agreement with the Commission if circumstances so warrant, <i>in order to ensure that the negotiations are concluded in due time.</i></p>	<p>3. With the approval of the Member State concerned, the periods referred to in paragraphs 1 and 2 may be extended. The periods referred to in paragraphs 1 and 2 shall be shortened in agreement with the Commission if circumstances so warrant.</p>	
<p>4. The Member State shall not</p>		<p>4. The Member State shall not</p>	

<p>sign, ratify or agree to the draft intergovernmental agreement or amendment to an existing intergovernmental agreement until the Commission has informed the Member State of any doubts, in accordance with paragraph 1, or, where applicable, has issued its opinion in accordance with paragraph 2, or, in the absence of a response or opinion from the Commission, until the periods referred to in paragraphs 1 or, where applicable, 2, have elapsed.</p>	<p>sign, ratify or agree to the draft intergovernmental agreement or amendment concerned [] until the Commission has informed the Member State of any doubts, in accordance with paragraph 1, or, where applicable, has issued its opinion in accordance with paragraph 2, or, in the absence of a response or opinion from the Commission, until the periods referred to in paragraphs 1 or, where applicable, 2, have elapsed.</p>	
<p>When signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall take utmost account of the Commission's opinion referred to in paragraph 2.</p>	<p>Before signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall demonstrate how the Commission's opinion <i>as</i> referred to in paragraph 2 have been addressed in order to ensure full compliance with Union law.</p>	<p>When signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall take utmost account of the Commission's opinion referred to in paragraph 2</p>
<p><i>Article 6</i> Notification obligations and assessment by the Commission with respect to existing intergovernmental agreements</p>		<p><i>Article 6</i> Notification obligations and assessment by the Commission with respect to existing intergovernmental agreements and new intergovernmental agreements relating to types of energy other than gas</p>
<p>1. By [3 months following the entry into force of this Decision] at the latest Member States shall notify to the Commission all existing intergovernmental agreements, including annexes and amendments thereto.</p>	<p>By [3 months following the entry into force of this Decision] at the latest Member States shall notify to the Commission all existing intergovernmental agreements, including annexes and amendments thereto. Where there are indications</p>	<p>1. By ...[3 months following the entry into force of this Decision] [] Member States shall notify to the Commission all existing intergovernmental agreements, including annexes and amendments thereto.</p>

<p>Where the existing intergovernmental agreement refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain elements which may have an impact on the functioning of the internal energy market or on the security of energy supply in the Union.</p>	<p><i>that it may be necessary to enter into negotiations with a third country in the future, Member States shall inform the Commission thereof.</i></p>	<p>Where the existing intergovernmental agreement refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain elements which <input type="checkbox"/> concern the purchase, trade, sale, storage or supply of energy in or to at least one Member State or the construction or operation of energy infrastructure with a physical connection to at least one Member State.</p>	
<p>The obligation to notify to the Commission according to this paragraph does not apply in respect of agreements between undertakings.</p>	<p>The obligation to notify to the Commission according to this paragraph does not apply in respect of agreements that are concluded solely between undertakings.</p>	<p>The obligation to notify to the Commission according to this paragraph does not apply in respect of agreements between undertakings</p>	
<p>2. Existing intergovernmental agreements which have already been notified to the Commission in accordance with Article 3(1) or (5) of Decision No 994/2012/EU, or point (a) of Article 13(6) of Regulation (EU) No 994/2010 at the date of entry into force of this Decision shall be considered as having been notified for the purposes of paragraph 1 of this Article, provided that the notification meets the requirements of that paragraph.</p>		<p>2. Existing intergovernmental agreements which have already been notified to the Commission in accordance with Article 3(1) or (5) of Decision No 994/2012/EU, or point (a) of Article 13(6) of Regulation (EU) No 994/2010 at the date of entry into force of this Decision shall be considered as having been notified for the purposes of paragraph 1 of this Article, provided that the notification meets the requirements of that paragraph.</p>	
<p>3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2.</p>	<p>3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2.</p>	<p>3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2 of</p>	

<p>Where, following its first assessment, the Commission has doubts as to the compatibility of those agreements with Union law, in particular with internal energy market legislation and Union competition law, the Commission shall inform the Member States concerned accordingly within nine months of the notification of those agreements.</p>	<p>Where, following its first assessment, the Commission has doubts as to the compatibility of those agreements with Union law, [/] the Commission shall inform the Member States concerned accordingly within nine months of the notification of those agreements.</p>	<p>this Article, as well as intergovernmental agreements relating to types of energy other than gas notified in accordance with Article 3(3). Where, following its first assessment, the Commission has doubts as to the compatibility of those agreements with Union law, in particular with internal energy market legislation and Union competition law, the Commission shall inform the Member States concerned accordingly within nine months of the notification of those agreements.</p>	
	<p>3a. Assessment by the Commission of intergovernmental agreements as well as existing intergovernmental agreements shall be without prejudice to the application of the Union rules on infringements, State aid and competition and shall not in any way pre-empt their assessment.</p>		
<p><i>Article 7</i> Notification obligations and assessment by the Commission with respect to non-binding instruments</p> <p>1. Upon adopting a non-binding instrument or an amendment to a non-binding instrument, the Member State concerned shall notify the non-binding instrument or the amendment, including any annexes thereto, to the Commission.</p>	<p>Before adopting a non-binding instrument or an amendment to a non-binding instrument, the Member State concerned shall promptly notify the non-binding instrument or the amendment, including any annexes thereto, to the Commission.</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	
<p>Where the non-binding instrument or the amendment to the non-binding</p>		<p><input type="checkbox"/></p>	

<p>instrument refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain elements which may have an impact on the functioning of the internal energy market or on the security of energy supply in the Union.</p>			
<p>2. By [3 months following the entry into force of this Decision] at the latest Member States shall notify to the Commission all existing non-binding instruments, including annexes and amendments thereto.</p>		<input type="checkbox"/>	
<p>Where the existing non-binding instrument refers explicitly to other texts, the Member State concerned shall also submit those other texts in so far as they contain elements which may have an impact on the functioning of the internal energy market or on the security of energy supply in the Union.</p>		<input type="checkbox"/>	
<p>3. The obligation to notify to the Commission according to paragraphs 1 and 2 does not apply in respect of agreements between undertakings.</p>	<p>3. The obligation to notify to the Commission according to paragraphs 1 and 2 does not apply in respect of agreements that are concluded solely between undertakings.</p>	<input type="checkbox"/>	
<p>4. Where, following its first assessment, the Commission considers that the measures implementing the non-binding instrument notified to it under paragraphs 1 and 2 could conflict with Union law, in particular with internal energy market legislation and Union competition law, the Commission may inform the Member State concerned accordingly.</p>	<p>4. The Commission shall inform the Member State concerned about its doubts that the measures implementing the non-binding instrument notified to it under paragraphs 1 and 2 could conflict with Union law or Energy Union objectives Before signing, ratifying or agreeing to a non-binding instrument or amendment, the Member State concerned shall</p>	<input type="checkbox"/>	

	<p><i>demonstrate how the Commission's opinion have been addressed to ensure full compliance of its implementing measures with Union law and the Union's energy security objectives. In the absence of a response from the Commission within the period of four weeks of notification, the Commission shall be deemed not to have any such doubts. The Commission's opinion on non-binding instruments shall be non-binding, however, when signing, ratifying or agreeing to a non-binding instrument, or an amendment to a non-binding instrument, the Member State concerned shall take utmost account of the Commission's opinion and address problematic provisions of such instruments.</i></p>		
	<p><i>4b. In the case of doubt as to whether an instrument constitutes a non-binding instrument or an existing non-binding instrument under this Decision and thus whether it is to be notified in accordance with Article 7, Member States shall consult the Commission without delay.</i></p>		
<p><i>Article 8</i> Transparency and confidentiality 1. When providing information to the Commission in accordance with Article 3(1) to (3), Article 6(1) and Article 7(1) and (2), a Member State may indicate whether any part of the</p>		<p><i>Article 8</i> Transparency and confidentiality 1. When providing information to the Commission in accordance with Article 3(1) to (3) and Article 6(1) □, a Member State may indicate whether any part of the information, be it</p>	

<p>information, be it commercial or other information the disclosure of which could harm the activities of the parties involved, is to be regarded as confidential and whether the information provided can be shared with other Member States.</p>		<p>commercial or other information the disclosure of which could harm the activities of the parties involved, is to be regarded as confidential and whether the information provided can be shared with other Member States.</p>	
<p>A Member State shall make such an indication with regard to the existing agreements referred to in Article 6(2) by [3 months following the entry into force of this Decision] at the latest.</p>		<p>A Member State shall make such an indication with regard to the existing agreements referred to in Article 6(2) by [3 months following the entry into force of this Decision] [].</p>	
<p>2. Where a Member State has not identified the information as confidential in accordance with paragraph 1, the Commission shall make that information accessible in secure electronic form to all other Member States.</p>	<p>2. Where a Member State has not identified the information as confidential in accordance with paragraph 1, the Commission shall make that information accessible in secure electronic form to all other Member States along with the note regarding any incompatibility with Union law.</p>	<p>2. Where a Member State has not identified the information as confidential in accordance with paragraph 1, the Commission shall make that information accessible in secure electronic form to all other Member States.</p>	
<p>3. Where a Member State has identified as confidential in accordance with paragraph 1 an existing intergovernmental agreement, an amendment to an existing intergovernmental agreement, a new intergovernmental agreement, an existing non-binding instrument, an amendment to an existing non-binding instrument or a new non-binding instrument, that Member State shall make available a summary of the information submitted.</p>		<p>3. Where a Member State has identified as confidential in accordance with paragraph 1 an existing intergovernmental agreement, an amendment to an [] intergovernmental agreement or [] a new intergovernmental agreement, [] that Member State shall make available a summary of the information submitted.</p>	
<p>That summary shall contain at least the following information regarding the</p>		<p>That summary shall contain at least the following information regarding the</p>	

intergovernmental agreement, non-binding instrument or amendment in question:	intergovernmental agreement <input type="checkbox"/> or amendment in question:		
(a) the subject matter;	(a) the subject matter;		
(b) the aim and the scope;	(b) the aim and the scope;		
(c) the duration;	(c) the duration;		
(d) the parties;	(d) the parties;		
(e) information on the main elements.	(e) information on the main elements.		
	<i>(ea) information regarding provisions falling within the Union's competence in the context of the Common Commercial Policy.</i>		
This paragraph shall not apply to information submitted in accordance with Article 3(1) and (2).	This paragraph shall not apply to information submitted in accordance with Article 3(1), <input type="checkbox"/> (2) and (2a).		
4. The Commission shall make the summaries referred to in paragraph 3 accessible in electronic form to all other Member States.	4. The Commission shall make the summaries referred to in paragraph 3 accessible in electronic form to all other Member States.		
5. Requests for confidentiality under this Article shall not restrict the access of the Commission itself to confidential information. The Commission shall ensure that access to the confidential information is strictly limited to the Commission services for which it is absolutely necessary to have the information available.	5. Requests for confidentiality under this Article shall not restrict the access of the Commission itself to confidential information. The Commission shall ensure that access to the confidential information is strictly limited to the Commission services for which it is absolutely necessary to have the information available.		
	<i>Commission representatives participating as observers in negotiations on intergovernmental agreements shall handle sensitive</i>		

	<i>information received during those negotiations with due confidentiality.</i>		
<p><i>Article 9</i></p> <p>Coordination among Member States</p> <p>The Commission shall facilitate and encourage coordination among Member States with a view to:</p> <p>(a) reviewing developments in relation to intergovernmental agreements and non-binding instruments and striving for consistency and coherence in the Union's external energy relations with producer, transit, and consumer countries;</p> <p>(b) identifying common problems in relation to intergovernmental agreements and non-binding instruments and considering appropriate action to address those problems and, where appropriate, proposing solutions;</p> <p>(c) on the basis of best practices and in consultation with Member States, developing optional model clauses, which, if applied, would significantly improve compliance of future intergovernmental agreements and non-binding instruments with Union law;</p>	<p>(b) identifying common problems in relation to intergovernmental agreements and non-binding instruments and considering appropriate action to address those problems and, where appropriate, proposing guidance and solutions;</p> <p>(c) on the basis of best practices and in consultation with Member States, developing, by ... [insert the date: 1 year after entry into force of this Decision], optional model clauses, which, if applied, would significantly improve compliance of future intergovernmental agreements and non-binding instruments with Union law;</p> <p><i>(to be merged with previous amendment on the same text:)</i></p> <p>(c) on the basis of best practices</p>	<p><i>Article 9</i></p> <p>Coordination among Member States</p> <p>1. The Commission shall facilitate and encourage coordination among Member States with a view to:</p> <p>(a) reviewing developments in relation to intergovernmental agreements [] and striving for consistency and coherence in the Union's external energy relations with producer, transit, and consumer countries;</p> <p>(b) identifying common problems in relation to intergovernmental agreements [] and considering appropriate action to address those problems and, where appropriate, proposing solutions;</p> <p><i>Note: see new 2. below</i></p>	

<p>(d) supporting, where appropriate, the development of multilateral intergovernmental agreements or non-binding instruments involving several Member States or the Union as a whole.</p>	<p>and in consultation with Member States, developing optional model clauses and guidelines, which, if applied, would significantly improve compliance of future intergovernmental agreements and non-binding instruments with Union law;</p>		
<p>(c) supporting, where appropriate, the development of multilateral intergovernmental agreements <input type="checkbox"/> involving several Member States or the Union as a whole.</p>			
<p><i>1a. By ... [insert the date: 1 year after entry into force of this Decision], the Commission shall, on the basis of best practices and after consulting Member States, develop an aggregated information system which, while protecting the confidentiality of sensitive information, guarantees increased transparency of the main elements of intergovernmental agreements so as to establish an indicative benchmark which can be utilised by Member States in negotiations in order to prevent the abuse of dominant positions by third countries.</i></p>			
		<p>2. By ...[two years following the entry into force of this Decision] [], the Commission shall, on the basis of best practices and in consultation with Member States, develop optional model clauses and guidance,</p>	

			including a list of examples of clauses that do not respect Union law and should therefore not be used. Such optional model clauses and guidance would [], if applied correctly, [] significantly improve compliance of future intergovernmental agreements [] with Union law.	
<i>Article 10</i> Reporting and review	<i>Article 10</i> Reporting and review	<i>Article 10</i> Reporting and review	<i>Article 10</i> Reporting and review	<i>Article 10</i> Reporting and review
1. By 1 January 2020 at the latest, the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.	1. By ... [two years after the date of entry into force of this Decision], the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.	1. By ... [three years following the entry into force of this Decision] [], the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.	1. By ... [three years following the entry into force of this Decision] [], the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.	1. By ... [three years following the entry into force of this Decision] [], the Commission shall submit a report on the application of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.
2. The report shall, in particular, assess the extent to which this Decision promotes compliance of intergovernmental agreements and non-binding instruments with Union law and a high level of coordination between Member States with regard to intergovernmental agreements and non-binding instruments. It shall also assess the impact that this Decision has on Member States' negotiations with third countries and whether the scope of this Decision and the procedures it lays down are appropriate.	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 []. It shall also assess the impact that this Decision has on Member States' negotiations with third countries and whether the scope of this Decision and the procedures it lays down are appropriate.	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 []. It shall also assess the impact that this Decision has on Member States' negotiations with third countries and whether the scope of this Decision and the procedures it lays down are appropriate.	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 []. It shall also assess the impact that this Decision has on Member States' negotiations with third countries and whether the scope of this Decision and the procedures it lays down are appropriate.	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 []. It shall also assess the impact that this Decision has on Member States' negotiations with third countries and whether the scope of this Decision and the procedures it lays down are appropriate.
<i>Article 11</i> Repeal	<i>Article 11</i> Repeal	<i>Article 11</i> Repeal	<i>Article 11</i> Repeal	<i>Article 11</i> Repeal
Decision No 994/2012/EU is repealed.	Decision No 994/2012/EU is repealed.	Decision No 994/2012/EU is repealed.	Decision No 994/2012/EU is repealed.	Decision No 994/2012/EU is repealed.

		with effect from ...	
<i>Article 12</i> Entry into force		<i>Article 12</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> .		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 13</i> Addressees		<i>Article 13</i> Addressees	
This Decision is addressed to the Member States.		This Decision is addressed to the Member States.	
Done at Brussels,		Done at Brussels,	
<i>For the European Parliament For the Council The President</i>		<i>For the European Parliament For the Council The President</i>	