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**NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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 - Preparation for the second informal trilogue

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1. The first trilogue on IGAs was held on 8 November, and on that occasion, the intention of the negotiators to reach an agreement on this dossier soon was confirmed. It was agreed to hold one or, if required, two further informal trilogue meetings on this dossier, on 24 November and 7 December. The final trilogue meeting on 7 December would be the last possible occasion to reach an agreement on this dossier during the Slovakian Presidency.
2. At the first trilogue, all the main issues listed below were discussed. In subsequent Technical Meeting and two Energy Working Party meetings, further compromise texts were discussed. Good progress was made on the basis of the flexibility shown by the two sides so far, to the extent that the second trilogue could potentially close the negotiations provisionally on most issues. The *Presidency compromise proposals* corresponding to the main issues are also set out briefly below, in *italics*.

**i) (AM 22, Art. 2(1)) Definition of 'intergovernmental agreement'.**

The EP requests to enlarge this definition to include also IGAs between EU governments and private undertakings in which a third-country state is a major stakeholder or has a controlling influence ('hybrid agreements'), and to add IGAs with an international organisation.

*The Presidency proposes as a compromise to accept the part of this amendment relating to the inclusion of a reference to "international organisations".*

**ii) (AM 24, 25, 26, Art. 3(1),(2a new) and (2b new)) Information to the Commission and other Member States on progress during negotiations.**

The EP proposes that Member States "*shall*" be obliged to keep the Commission informed of progress during the IGA negotiations regularly, whereas the Council proposes that Member States "*should*" do so. The EP furthermore proposes to prescribe the content of this information and its distribution to other Member States.

*The Presidency compromise contains several elements that appear acceptable to delegations, and maintains the Council text with "should".*

**iii) (Art. 3(2)) Scope of the obligatory *ex ante* assessment by the Commission.**

Whereas the Commission and Parliament insist on covering all types of energy (*i.e.* gas, electricity, oil), many delegations maintain that they can not depart from the Council common position, in which the scope of this *ex ante* assessment (not the *ex post* assessment) was limited to gas-related IGAs. Possible options forward would be to extend the scope of the *ex ante* assessment to electricity and/or oil. *The Presidency underlines that the EP considers this issue to be the most important one. However, given delegations' positions, no compromise regarding this issue will be included in the proposed mandate for the trilogue on 24 November. Nevertheless, the Presidency invites delegations to indicate their ultimate flexibility on this issue at the Coreper meeting.*

**iv) (AM 30, Art. 4(2)) Participation of the Commission in negotiations on IGAs.**

The EP proposes that the Commission can participate in any negotiation meeting if it deems this necessary.

*The Presidency compromise proposal for this paragraph merges part of the EP text with the Council text, to the effect that the Commission may request to be invited to participate as an observer, subject to the written approval of the Member State concerned.*

**v) (AM 35, Art. 5(4) second subpara) The Member State's account taken of the Commission's *ex ante* assessment**

The EP proposes an addition, to the effect that the Member State must "*demonstrate*" how the Commission's opinion "*has been addressed*" in the IGA, before signing an IGA. Council accepted the Commission's original wording which obliges MS to "*take utmost account*" of the Commission opinion. The Commission's wording had been drafted in order to create a 'suspensory' effect of 12 weeks maximum and not to affect the competence of MS to sign IGAs.

*The Presidency compromise proposal is taken up in Art. 3(3). However, in view of the opposition of several delegations, it is proposed as a voluntary ("may") provision. The word "before" is included in Art. 5(4) because this describes accurately what should happen in practice (i.e. a Member State should not wait with taking utmost account of the Commission's opinion until the moment of signature).*

**vi) (AM 40, 41, 42, Art. 7) Non-binding instruments ('NBIs')**

The Council deleted this Article - which foresaw an *ex post* notification and Commission assessment of NBIs - *inter alia* on the grounds that NBIs cannot have legal effects<sup>1</sup>. The EP proposes to amend the Commission proposal by adding an obligatory Commission *ex ante* assessment, with (as for IGAs) an obligation for Member States to "*demonstrate*" how the Commission's opinion "*has been addressed*" in the NBI before signing.

*It would appear that in the context of an overall final compromise, a qualified majority of delegations in Council could accept the inclusion of NBIs, by means of a voluntary *ex post* notification, and with the inclusion of the corresponding definitions in Art. 2(3) and (4). The Presidency underlines that such a compromise is opposed by some delegations, and that it forms a red line for several other delegations, and that there is thus no further flexibility on this issue. Some explanatory text was added to recital 11.*

**vii) (AM 8 (rec. 7), 18 (rec. 16), 21 (Art. 1(1)), 26 (Art. 3(2b new), 29 (Art. 4(1), 31 (Art. 4(3), 42 (Art. 7(4), (4a new) (4b new)) References to the objectives of the Energy Union strategy and similar terms.**

The EP may be ready to give up multiple references to the Energy Union and its objectives throughout the text and accept a text along the lines of the draft compromise in Article 4(1) which contains a single reference to the Energy Union. *The Presidency invites delegations to show flexibility on its latest amended compromise proposal for this matter, since it considers that a compromise along these lines forms an essential element of the final overall compromise.*

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<sup>1</sup> Note: this important distinction between IGAs and NBIs was further clarified by Council's new recital 10a, which the EP proposes to accept in AM 12.

4. The Presidency underlines that there is only little time left between the second trilogue on 24 November and the final trilogue on 7 December, with the Coreper discussion for the final mandate scheduled for 30 November, and no Energy Working Party meeting in between. It is therefore imperative that the second trilogue provisionally closes many outstanding issues! This mandate therefore aims to construct various elements of the overall final compromise package.
  
6. The European Economic and Social Committee is currently examining the proposal, whilst the Committee of the Regions decided not to issue an opinion.
  
7. Coreper is invited to:
  - agree on a mandate for the Presidency for the second trilogue on 24 November, on the basis of the text set out in the Annex;
  - indicate its ultimate flexibility on the issue of scope for the ex ante assessment by the Commission, including on possible options forward as set out under point 2(iii) above.

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*N.B. The fourth column contains Presidency compromise proposals: ***bold italics*** **underlined** text indicates text as it was proposed by the EP, **underlined bold** text indicates compromise text proposed by the Presidency in response to EP draft amendments. Accepted and rejected amendments are indicated. Where the fourth column is empty, Council maintains its position as reflected in the third column. All changes compared to the meeting document(dated 31 October) of the first trilogue are shown in **highlighted text**.*

**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<sup>2</sup>**

(Text with EEA relevance)

COMMISSION PROPOSAL (2016/0031 (COD) - doc. 6226/16)	TITLE OPINION	COUNCIL GENERAL APPROACH (doc. 8945/16) <sup>3</sup>	PRESIDENCY COMPROMISE proposals
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,	<i>N.B. The text of the compromise proposals for the recitals is without prejudice to any alignment with the content of the Articles that may prove necessary.</i>
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 <sup>3</sup> ,		Having regard to the opinion of the European Economic and Social Committee <sup>4</sup> ,	
Having regard to the opinion of the Committee of the Regions, Acting in accordance with the ordinary legislative procedure, <sup>4</sup>		<u>After consulting</u> the Committee of the Regions, Acting in accordance with the ordinary legislative procedure, <sup>5</sup>	
Whereas:		Whereas:	

<sup>2</sup> 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"

<sup>3</sup> 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.

<sup>4</sup> OJ C , p .

<sup>5</sup> 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><b>AM 1</b></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. <b>Transparency and compliance with Union law represents an important element in ensuring energy stability of the Union.</b> 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>	<p><i>Accept</i></p>
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	<p><b>AM 2</b></p> <p><i>(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 cooperation with regard to energy-security with the Union's neighbouring countries, with strategic partners and also among the Union institutions.</i></p>		<p><i>(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 cooperation with regard to energy security with the Union's neighbouring countries and with strategic partners [ ]</i></p>
<p>(2) The objective of the Energy Union Strategy, as adopted by the Commission on 25 February 2015<sup>6</sup>, 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 2014<sup>7</sup>. 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 2015<sup>3</sup>, is to give consumers secure, sustainable, competitive and affordable energy. <b><i>This can be achieved when energy, trade and external policies are pursued in a coherent and consistent manner.</i></b> 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 2014<sup>4</sup>. In the same spirit, the European Council in its conclusions of 19 March 2015 called for full compliance with</p>	<p>(2) The objective of the Energy Union Strategy, as adopted by the Commission on 25 February 2015<sup>5</sup>, 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 2014<sup>6</sup>. In the same spirit, the European Council in its conclusions of 19 March 2015 called for full compliance with the buying of gas from external suppliers, notably by reinforcing</p>	<p><i>Accept in part, with changes</i></p> <p>(2) The objective of the Energy Union Strategy, as adopted by the Commission on 25 February 2015<sup>5</sup>, is to give consumers secure, sustainable, competitive and affordable energy. <b><u>Pursuing energy, trade and external policies [ ] in a coherent and consistent manner will contribute significantly to achieving this objective.</u></b> 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 2014<sup>6</sup>. In the same spirit, the European Council in its conclusions of 19 March</p>

<sup>6</sup> COM(2015)80

<sup>7</sup> COM(2014)330



<p>transparency of such agreements and compatibility with Union energy security provisions.</p>	<p>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. <i>The Commission should therefore attempt, within its areas of competence and subject to the principles 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>transparency of such agreements and compatibility with Union energy security provisions.</p>	<p>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>
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	<p style="text-align: center;"><b>AM 4</b></p> <p><i>(2a) The European Parliament, in its resolution of 15 December 2015 entitled Towards a European Energy Union<sup>1a</sup>, stressed the need to enhance the coherence of the Union's external energy security and greater transparency in energy-related agreements.</i></p> <p><sup>1a</sup> Texts adopted P8_TA(2015)0444</p>		Accept
<p>(3) Decision No 994/2012/EU of the European Parliament and of the Council<sup>8</sup> 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>(3) Decision No 994/2012/EU of the European Parliament and of the Council<sup>7</sup> 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 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</p>		<p>(4) However, Decision No 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</p>	

<sup>8</sup> OJ L 299, 27.10.2012, p. 13.

<p>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>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><b>AM 5</b></p> <p><i>(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 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><i>(4a) A high degree of transparency with regard to agreements between Member States and third countries in the field of energy [] will be of benefit in achieving both 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 non-compliance 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><b>AM 6</b></p> <p>(5) In order to avoid any <b>non-compliance</b> with Union law and <b>provisions relating to Union energy security, and to enhance transparency</b>, 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 <b>and adequately</b> of the progress of the negotiations. <b>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.</b> Member States should, <b>in any event</b>, have the possibility to invite the Commission to participate in the negotiations as an observer.</p>	<p>(5) In order to avoid any non-compliance 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><i>Accept in part</i></p> <p><i>Note: mostly related to Art. 4(1) and (2)</i></p> <p>(5) In order to avoid any non-compliance 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. <b><u>The Commission should have the possibility to ask to be invited to 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.</u></b></p> <p><i>Note: new text is related to Art. 4(2), where it is specified that the written approval of the MS concerned is still required before the Commission may participate as observer.</i></p>
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<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 style="text-align: center;"><b>AM 7</b></p> <p>(6) During the negotiations <i>of an intergovernmental agreement</i> the Commission should <i>advise the Member State concerned</i> on how to <i>ensure compliance</i> with Union law. In particular, the Commission <i>should develop</i>, together with Member States, optional model clauses or guidelines <i>and examples of draft clauses that should, in principle, 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.</i> The Commission should have the possibility to draw attention <i>of the Member State concerned</i> to the <i>relevant</i> 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 <b>intergovernmental agreement</b>, the Commission should have the possibility to advise <b>the Member State(s) concerned</b> on how to avoid incompatibility with Union law. [] <b>In this framework</b>, the Commission should <b>also</b> have the possibility to draw <b>the attention of the Member State(s) concerned</b> to the <b>relevant Union</b> [] energy policy objectives and the principle of solidarity between Member States and Union policy positions adopted in Council or European Council conclusions <b>where relevant; however, this should not form part of the legal assessment of the Commission of the draft intergovernmental agreement or amendment.</b> []</p>	<p><i>Accepted in part: in this recital and in recital 16</i></p> <p><b>Note: model clauses and guidance are addressed in recitals 7a and 16</b></p> <p>(6) During the negotiation[] of an <b>intergovernmental agreement</b>, the Commission should have the possibility to advise <b>the Member State(s) concerned</b> on how to avoid incompatibility with Union law. [] <b>In this framework</b>, the Commission should <b>also</b> have the possibility to draw <b>the attention of the Member State(s) concerned</b> to the <b>relevant Union</b> [] energy policy objectives and the principle of solidarity between Member States and Union policy positions adopted in Council or European Council conclusions <b>where relevant; however, this should not form part of the legal assessment of the Commission of the draft intergovernmental agreement or amendment.</b> []</p>
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<p>(7) In order to ensure compliance with Union law, Member States should notify the draft intergovernmental 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.</p>	<p><b>AM 8</b></p> <p>(7) In order to ensure compliance with Union law <b>and to respect the objectives of the Energy Union Strategy</b>, Member States should notify the draft intergovernmental agreement to the Commission <b>as early as possible</b>, before it becomes legally binding for the parties (ex-ante). In a spirit of cooperation, the Commission should support the Member State in identifying <b>potential</b> 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>	<p>(7) In order to ensure compliance with Union law, <b>and having due regard to the fact that currently, 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</b>, Member States should notify the draft intergovernmental agreement <b>relating to gas</b> 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>	<p><i>Reject</i></p> <p><i>Note: Council split this long recital into two parts</i></p> <p>(7) In order to ensure compliance with Union law, <b>and having due regard to the fact that currently, 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</b>, Member States should notify the draft intergovernmental agreement <b>relating to gas</b> 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>
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<p>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>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. <i>The Commission should consider shortening the periods provided for its assessment, in particular if a Member State so requests.</i></p> <p>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. <i>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.</i></p>	<p><b>(7a)</b> 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. <b>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.</b> 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 [] a suitable solution to eliminate the incompatibility identified.</p>	<p><i>Accept in part</i></p> <p><b>(7a)</b> 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. <b>The Commission should consider shortening the periods provided 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.</b> 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 [] a suitable solution to eliminate the incompatibility identified.</p>
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<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 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><b>AM 9</b></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 <b>and is an important element in ensuring the Union's energy stability</b>. 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>(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 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><i>Accept</i></p> <p><i>Note: AM appears to overlap with AM I</i></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><b>AM 10</b></p> <p>(9) The Commission should assess the compatibility of intergovernmental agreements <b>with Union law</b> that entered into force or are applied provisionally prior to the entry into force of this Decision and inform the Member States accordingly. <b>Such an assessment should not in any way prejudice the substance or content of agreements, but should ensure they comply with Union law.</b> 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 <b>reach</b> [] a suitable solution to eliminate the incompatibility identified.</p>	<p><i>Reject</i></p>



<p>(10) This Decision should only apply to intergovernmental agreements that have an impact on the internal energy market or the security of energy 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 this Decision.</p>	<p style="text-align: center;"><b>AM 11</b></p> <p>(10) This Decision should only apply to intergovernmental agreements that have a <i>potential</i> impact on the internal energy market or the security of energy supply in the Union. <i>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.</i> In case of doubt Member States 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>(10) This Decision should <input type="checkbox"/> apply to intergovernmental agreements; <b>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.</b> <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 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><i>Accept in part</i></p> <p>(10) This Decision should <input type="checkbox"/> apply to intergovernmental agreements; <b>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.</b> <input type="checkbox"/> Only those intergovernmental agreements that concern the purchase, trade, <i>transit</i> 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 should be notified. <input type="checkbox"/> In case of doubt, Member States should consult the Commission <i>without delay.</i> 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 style="text-align: center;"><b>AM 12</b></p> <p>(10a) <i>The fact that an instrument, or of parts thereof, is legally binding and not its formal designation should determine whether it qualifies as an intergovernmental agreement or, where it is not legally binding, 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>(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 <i>[/]</i> 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 to the Commission, <i>ex post</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><b>AM 13</b></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 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>(11) Member States establish relations to third countries not only by concluding intergovernmental agreements, but also in the form of non-binding instruments, <b>which are often formally designated by terms such as memorandum of understanding, joint declaration, ministerial joint declaration, joint action or joint code of conduct.</b> Even if legally non-binding, such instruments can be used to set out a detailed framework for energy infrastructure and energy supply. <b>□ 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 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.</b></p>	<p><i>Reject</i></p> <p><i>Note: related to Art. 7; new text as part of compromise on Art. 7</i></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, <b>which are often formally designated by terms such as memorandum of understanding, joint declaration, ministerial joint declaration, joint action or joint code of conduct. Due to their legally non-binding character, Member States cannot be legally forced to implement such instruments, including where they are incompatible with EU law.</b> Even if legally non-binding, such instruments can be used to set out a detailed framework for energy infrastructure and energy supply. <b>□ 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 Member States and one or more third countries which set conditions for energy supply or for the development of energy infrastructures, including by containing interpretations of Union law in this respect - 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.</b></p>
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<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><b>AM 14</b></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><i>Accept</i></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><b>AM 15</b></p> <p>(13) This Decision should not create obligations as regards agreements <b>that are concluded solely</b> between undertakings. However, <b>subject to fully respecting commercially sensitive information</b> Member States should be <b>obliged</b> to communicate to the Commission agreements that are concluded solely between undertakings <b>where they</b> are referred to explicitly in intergovernmental agreements or non-binding instruments.</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><i>Reject</i></p> <p><i>Note: linked to Art. 3(4)</i></p>

<p>(14) The Commission should make information it receives available to all other Member States in secure 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 Council<sup>9</sup>.</p>	<p style="text-align: center;"><b>AM 16</b></p> <p>(14) The Commission should make information it receives <i>on intergovernmental agreements and 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 Council<sup>11</sup>.</p>	<p>(14) The Commission should make information it receives available to all other Member States in secure 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 Council<sup>8</sup>.</p>	<p><i>Accept in part</i></p> <p>(14) The Commission should make information it receives <i>on intergovernmental agreements</i> available to all other Member States in secure electronic form, <i>in order to enhance coordination and transparency between Member States, 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 Council<sup>8</sup>.</p>
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<sup>9</sup> 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 style="text-align: center;"><b>AM 17</b></p> <p>(15) If a Member State considers an intergovernmental agreement to be confidential, it should provide the Commission with a summary <b><i>containing its main elements and relevant clauses, including restrictions</i></b>, 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>(15) If a Member State considers an intergovernmental agreement to be confidential, it should provide the Commission with a summary <b><u>containing its subject matter, aim, scope, duration, parties, and information on the main elements</u></b> of it for the purposes of sharing that summary with the other Member States.</p> <p><i>Note: aligned with Art. 8(3)</i></p> <p><i>Accept in part AM 7 to recital 6 here:</i></p> <p><i>Note: Council and EP text changes are similar to some extent</i></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 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</p>	<p style="text-align: center;"><b>AM 18</b></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 Commission <b><i>in cooperation with Member States, and</i></b> 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, <b><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></b>. The use of such model clauses should <b><i>ensure compliance</i></b> of intergovernmental agreements with</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 Commission, <b><i>in cooperation with Member States, and</i></b> 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, <b><i>as well as guidance, including a list of examples of clauses that do not respect Union law and should therefore not be used</i></b>. The use of such model clauses should aim to avoid conflicts of intergovernmental</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 Commission, <b><i>in cooperation with Member States, and</i></b> 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, <b><i>as well as guidance, including a list of examples of clauses that do not respect Union law and should therefore not be used</i></b>. The use of such model clauses should aim to avoid conflicts of intergovernmental</p>

<p>should be possible to adapt their content to any particular circumstance.</p>	<p>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>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>agreements with Union law, in particular internal energy market rules and competition law, and conflicts with international agreements concluded by the Union. <u>Such model clauses or guidance should serve as a tool of reference for the competent authorities and will thus benefit increased transparency and compatibility with Union law.</u> The <b>use of such model clauses</b> [] should be optional, and it should be possible to adapt their content to any particular circumstance.</p> <p><i>Accept in part</i></p> <p><i>Note: on the second sentence of the AM, EP will be invited to clarify.</i></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 area of intergovernmental agreements.</p>	<p><b>AM 19</b></p> <p>(17) The improved mutual knowledge of existing and new intergovernmental agreements and non-binding instruments should <b>enhance transparency and coordination</b> in energy matters between Member States and the Commission. <b>Enhanced transparency and coordination is especially important for Member States relying on the interconnections with a Member State negotiating an intergovernmental agreement.</b> Such improved coordination should enable Member States to benefit fully from the political and economic weight of the Union, <b>increase their negotiation power vis-à-vis third countries</b> and enable the Commission to <b>ensure security of energy supply</b> in the Union.</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 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>(17) The improved mutual knowledge of existing and new intergovernmental agreements [] should allow for <b>enhanced transparency and</b> 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><i>Note: "leveraging negotiation power" is addressed in recital 14</i></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><b>AM 20</b></p> <p>(18) The Commission should facilitate and <i>ensure</i> coordination between Member States with a view to enhancing the overall strategic role <i>in the field of energy</i> of the Union through a <i>well-defined</i> and effective <i>long-term</i> 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 through a strong and effective coordinated approach to producer, transit, and consumer countries.</p>	<p><i>Accept in part</i></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 <i>in the field of energy</i> through a <i>well-defined</i> 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 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>(19) Since the objective of this Decision, namely the exchange of information between Member States and the Commission with regard to intergovernmental agreements [] in the field of energy, cannot be sufficiently achieved by the Member States but can rather, by reason of the effects of this Decision, be better achieved at Union level, the Union may adopt 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 between Member States with regard to intergovernmental agreements in the field of energy.</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 Member States with regard to intergovernmental agreements in the field of energy.</p>	
<p>(22) Decision No 994/2012/EU should be repealed. HAVE ADOPTED THIS DECISION:</p>		<p>(22) Decision No 994/2012/EU should <b>therefore</b> be repealed HAVE ADOPTED THIS DECISION:</p>	



<p><i>Article 1</i> <b>Subject matter and scope</b></p> <p>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.</p>	<p><b>AM 21</b></p> <p>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 <b>and to ensure security of supply to the Union and to help achieve the goals of the Energy Union Strategy.</b></p>	<p><i>Article 1</i> <b>Subject matter and scope</b></p> <p>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 <b>ensure</b> [] the functioning of the internal energy market <b>and enhance the security of energy supply in the Union.</b></p>	<p><i>Note: already accepted in part in Council text</i></p>
<p>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.</p>		<p>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>	
<p><i>Article 2</i> <b>Definitions</b></p> <p>For the purposes of this Decision the following definitions shall apply:</p>		<p><i>Article 2</i> <b>Definitions</b></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><b>AM 22</b></p> <p>(1) ‘intergovernmental agreement’ means any legally binding agreement, <b>regardless of its formal designation</b>, between one or more Member States and one or more third countries, <b>including international organisations, companies in which a third country is the major stakeholder and companies in which the third country has a major influence in the decision-making process</b>, 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 <b>and which 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</b>; 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, <b>regardless of its formal designation</b>, between one or more Member States and one or more third countries, <b>or between one or more Member States and an international organisation</b> <input type="checkbox"/> that concerns:</p> <p>(i) <b>the purchase, trade, sale, storage or supply of energy in or to at least one Member State, or</b></p> <p>(ii) <b>the construction or operation of energy infrastructure with a physical connection to at least one Member State;</b></p> <p>however, where such a legally binding agreement also covers other issues, only <input type="checkbox"/> <b>the provisions related to the aforementioned energy issues and the</b> <input type="checkbox"/> general provisions applicable to those energy-related provisions are deemed to constitute an ‘intergovernmental agreement’;</p>	<p>Accept in part</p> <p>Note: part of Council text is similar to AM; the EP provided the example of the Eurasian Union as a relevant international organisation in this context.</p> <p>(1) ‘intergovernmental agreement’ means any legally binding agreement, <b>regardless of its formal designation</b>, between one or more Member States and one or more third countries, <b>or between one or more Member States and an international organisation</b> <input type="checkbox"/> that concerns:</p> <p>(i) <b>the purchase, trade, sale, transit, storage or supply of energy in or to at least one Member State, or</b></p> <p>or</p> <p>(ii) <b>the construction or operation of energy infrastructure with a physical connection to at least one Member State;</b></p> <p>however, where such a legally binding agreement also covers other issues, only <input type="checkbox"/> <b>the provisions related to the aforementioned energy issues and the</b> <input type="checkbox"/> general provisions applicable to those energy-related provisions are deemed to constitute an ‘intergovernmental agreement’;</p>
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<p>(2) 'existing intergovernmental agreement' means an intergovernmental agreement which entered into force or is applied provisionally prior to the entry into force of this Decision;</p>		<p>(2) 'existing intergovernmental agreement' means an intergovernmental agreement which entered into force or is applied provisionally prior to the entry into force of this Decision;</p> <p><input type="checkbox"/></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><b>AM 23</b></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 <i>or operation</i> of energy infrastructures;</p>	<p><input type="checkbox"/></p>	<p><i>Reject</i></p> <p><i>Note: consequential change to Art. 7 compromise proposal</i></p> <p><b>(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 action or joint code of conduct, which [] sets the conditions for energy supply (such as volumes and prices) or the development of energy infrastructures;</b></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>Note: consequential change to Art. 7 compromise proposal</i></p> <p><b>(4) 'existing non-binding instrument' means a non-binding instrument signed or otherwise agreed prior to the entry into force of this Decision.</b></p>

<p><i>Article 3</i>  <b>Notification obligations with respect to intergovernmental agreements</b></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><i>Article 3</i>  <b>Notification obligations with respect to intergovernmental agreements</b></p> <p>1. When a Member State intends to enter into negotiations with a third country in order to amend an [] 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>	
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<p>Where the Member State gives the Commission such notice of negotiations, the Member State concerned should keep the Commission regularly informed of the progress of the negotiations.</p>	<p><b>AM 24</b> Once the Member State <i>has given</i> the Commission such notice of negotiations, the Member State concerned <i>shall</i> keep the Commission regularly informed of the progress of the negotiations.</p>	<p><input type="checkbox"/> The Member State concerned should keep the Commission regularly informed of the progress of the negotiations.</p>	<p><i>Reject (new text in response to AM 25)</i> <input type="checkbox"/> The Member State concerned should keep the Commission regularly informed of the progress of the negotiations. <u><i>The information provided to the Commission shall include indications of the provisions to be addressed in the negotiations and the objectives of the negotiations</i></u> <input type="checkbox"/> <u><i>in accordance with confidentiality provisions as set out Article 8.</i></u></p> <p><i>Note: Council limited the scope to gas</i></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 <b>relating to gas</b> or an amendment to an <input type="checkbox"/> intergovernmental agreement <b>relating to gas</b>, but before the closure of formal negotiations, the Member State concerned shall notify to the Commission <b>that</b> <input type="checkbox"/> draft agreement or amendment together with any annexes thereto for ex-ante assessment in accordance with Article 5.</p>	<p><i>Note: consequential change Art. 2(1)</i> Where <b>that</b> <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 <b>the purchase, trade, sale, transit, 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.</b></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 <b>that</b> <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 <b>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.</b></p>	<p><i>Note: consequential change Art. 2(1)</i> Where <b>that</b> <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 <b>the purchase, trade, sale, transit, 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.</b></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 the intergovernmental agreement or amendment under negotiation with Union law, it shall notify to the Commission this draft agreement or 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><b>2a.</b> 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><b>AM 25</b>  <b>2a (new).</b> <i>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>Accept in part (placed at the end of para 1)</i></p>

	<p><b>AM 26</b>  <b>2b (new). The Commission shall make the information received, with the exception of confidential parts identified in accordance with Article 8, and any note regarding the incompatibility with Union law accessible to all Member States in order to ensure that the objectives of the Energy Union are achieved.</b></p>		<p><i>Reject</i>  <i>Note: the sharing of information referred to in Art. 3(1) to (3) with other MS is addressed in Art. 8</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>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>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.  <b>In case the Commission has issued an opinion as referred to in Article 5(2), and a Member State has departed from the Commission's opinion, the Member State may explain to the Commission in writing the reasons underlying its decision.</b></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><b>AM 27</b></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 <i>any</i> of the <i>elements listed in point 1 of Article 2(1)</i>.</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 <input type="checkbox"/> <b>concern the purchase, trade, sale, storage or supply of energy in or to at least one Member State or the operation of energy infrastructure with a physical connection to at least one Member State.</b></p>	<p><i>Accept in substance (i.e. consequential change Art. 2(1)):</i></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 <input type="checkbox"/> <b>concern the purchase, trade, sale, <i>transit</i>, 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.</b></p>
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<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><b>AM 28</b></p> <p>The obligation to notify to the Commission according to paragraphs 2 and 3 <b>shall</b> not apply in respect of agreements <b>that are concluded solely</b> between undertakings</p> <p><i>In the case of doubt as to whether an agreement constitutes an intergovernmental agreement or an existing intergovernmental agreement and thus whether it is to be notified in accordance with Articles 3 and 6, the Member States shall consult the Commission without delay.</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><b>Accept in part</b></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><b>Where a Member State is in doubt as to whether an agreement constitutes an intergovernmental agreement and thus whether it is to be notified in accordance with Articles 3 and 6, the Member State shall consult the Commission without delay.</b></p> <p><i>Note: this issue is also addressed in recitals 10 and 10a</i></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 Article 6(3) shall start to run on the date when the complete notification file has been registered in the application.</p>		<p>5. All notifications pursuant to paragraphs 1 to 3 of this Article <b>and</b> 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 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> <b>Assistance from the Commission</b></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><b>AM 29</b></p> <p>1. Where a Member State gives the Commission notice of negotiations pursuant to Article 3(1), the Commission services <b>shall</b> provide it with advice <b>and guidelines</b> on how to <b>ensure that</b> the intergovernmental agreement or the amendment to an existing intergovernmental agreement under negotiation <b>comply with Union law and the Union's energy security objectives</b>.</p>	<p><i>Article 4</i> <b>Assistance from the Commission</b></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>	<p><i>Reject</i></p> <p><b>Note: the text below includes a compromise proposal for the various references to the Energy Union strategy/objectives, etc. contained in AM 8, 18, 21, 26, 29 and 31.</b></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. <b>This advice may include relevant optional model clauses and guidance that the Commission will develop in consultation with Member States in accordance with Article 9(2).</b></p> <p><b>The Commission services may [] also [] draw the attention of the Member State[] concerned to the relevant Union energy policy objectives, including on Energy Union [].</b></p> <p>That Member State may also request the assistance of the Commission in those negotiations.</p>
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<p>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.</p>	<p style="text-align: center;"><b>AM 30</b></p> <p>2. <i>Where the Commission considers it to be necessary in view of the functioning of the internal energy market or the security of energy supply in the Union, it shall</i> participate in the negotiations as an observer without limiting Member States' freedom of negotiations. <i>A Member State concerned may also request the assistance of the Commission in the negotiations.</i></p>	<p>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.</p>	<p><i>Note: see recital 5 for added reference to the functioning of the IEM.</i></p> <p><i>Note: the MS request to the Commission for assistance in the negotiations is covered in para 1.</i></p> <p>2. At the request of the Member State concerned, the Commission may participate in the negotiations as an observer. <i>Where the Commission considers it to be necessary in view of the functioning of the internal energy market or the security of energy supply in the Union, it may request to participate in the negotiations as an observer; its participation shall be subject to the written approval of the Member State concerned.</i></p>
<p>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.</p>	<p style="text-align: center;"><b>AM 31</b></p> <p>3. <i>In the course of the negotiations, the Commission shall</i> provide the Member State concerned with advice on how to ensure that the intergovernmental agreement or amendment under negotiation <i>complies with Union law and respects Energy Union objectives. Commission representatives shall handle sensitive information received during the negotiations with due confidentiality.</i></p>	<p>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.</p>	<p><i>Accept in part ('confidentiality issue'), but in Art. 8(5)</i></p> <p><i>See also compromise proposal for Art. 4(1)</i></p> <p>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.</p>

<p><i>Article 5</i> <b>Assessment by the Commission</b></p> <p>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 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><b>AM 32</b></p> <p>1. The Commission shall, within <b>four</b> 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 concerned of any doubts it may have as to the compatibility of the draft intergovernmental agreement or amendment with Union law <b>/ /</b>. 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><i>Article 5</i> <b>Assessment by the Commission</b></p> <p>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) <b>or (2a)</b>, inform the Member State 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><i>Reject</i></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><b>AM 33</b></p> <p>2. Where the Commission informs the Member State concerned pursuant to paragraph 1 that it <b>finds an intergovernmental agreement or amendment to be incompatible</b> with Union law. <b>[ / ] it shall provide the Member State with a detailed opinion</b> 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>2. Where the Commission informs the Member State concerned pursuant to paragraph 1 that it has doubts, it shall <b>provide [ ]</b> the Member State concerned <b>with [ ]</b> 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><b>AM 34</b></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, <b>in order to ensure that the negotiations are concluded in due time.</b></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>Accept</p>
<p>4. The Member State shall not 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>4. The Member State shall not sign, ratify or agree to the draft intergovernmental agreement or amendment <b>concerned</b> 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><b>AM 35</b></p> <p><b>Before</b> signing, ratifying or agreeing to an intergovernmental agreement or amendment, the Member State concerned shall <b>demonstrate how</b> the Commission's opinion <b>as</b> referred to in paragraph 2 <b>has been addressed in order to ensure full compliance with Union law.</b></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><b>Accept, with changes, here and in Art. 3(3) - in the context of the notification of the IGAs.</b></p> <p><b>Before</b> 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>  <b>Notification obligations and assessment by the Commission with respect to existing intergovernmental agreements</b></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><b>AM 36</b></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. <i>Where there are indications that it may be necessary to enter into negotiations with a third country in the future, Member States shall inform the Commission accordingly.</i></p>	<p><i>Article 6</i>  <b>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</b></p> <p>1. By <u>  </u> [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><i>Reject</i></p> <p><i>Note: see Art. 3(1)</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 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 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 [ ] <b>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.</b></p>	<p><i>Note: consequential change to Art. 2(1)</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 [ ] <b>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.</b></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><b>AM 37</b></p> <p>The obligation to notify to the Commission according to this paragraph <i>shall</i> not apply in respect of agreements <i>that are concluded</i> 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><i>Reject</i></p>
<p>3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2. 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><b>AM 38</b></p> <p>3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2. 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>3. The Commission shall assess intergovernmental agreements notified in accordance with paragraph 1 or 2 of <b>this Article, as well as intergovernmental agreements relating to types of energy other than gas notified in accordance with Article 3(3)</b>. 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><i>Reject</i></p>

<p><i>Article 7</i>  <b>Notification obligations and assessment by the Commission with respect to non-binding instruments</b></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><b>AM 39</b>  <i>3a. The Commission's assessment of intergovernmental agreements and 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.</i></p>		<p><i>Reject</i>  Note: covered in recital 20</p>
	<p><b>AM 40</b>  <i>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.</i></p>	<input type="checkbox"/>	<p><i>Note: Council deleted this Article (whilst keeping references to NBIs in recitals 10a and 11)</i></p> <p><i>Note to delegations: in the context of the overall final compromise, the Presidency proposes the following:</i></p> <p><b>1. Before or after the adoption of [ ] a non-binding instrument or an amendment to a non-binding instrument, Member States may [ ] notify the non-binding instrument or the amendment, including any annexes thereto, to the Commission.</b></p>
<p>Where the non-binding instrument or the amendment to the 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>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>2. Member States may also notify to the Commission existing non-binding instruments, including annexes and amendments thereto.</p>
<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. Where the non-binding instrument or the amendment to a non-binding instrument refers explicitly to other texts, the Member State concerned may [ ] also submit those other texts in so far as they contain elements which [ ] sets conditions for energy supply (such as volumes and prices) or for the development of energy infrastructures.</p>
<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><b>AM 41</b></p> <p>3. The obligation to notify to the Commission according to paragraphs 1 and 2 does not apply in respect of agreements <i>that are concluded</i> solely between undertakings.</p>	<input type="checkbox"/>	<p><i>Reject</i></p>

<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><b>AM 42</b></p> <p><b><i>4. The Commission shall inform the Member State concerned of its doubts</i></b> that the measures implementing the non-binding instrument notified to it under paragraphs 1 and 2 could conflict with Union law or <b><i>the objectives of the Energy Union Strategy.</i></b></p> <p><b><i>4a. Before signing, ratifying or agreeing to a non-binding instrument or amendment, the Member State concerned shall demonstrate how the Commission's opinion has been addressed to ensure full compliance of its implementing measures with Union law and the objectives of the Union's energy security.</i></b></p> <p><b><i>In the absence of a response from the Commission within 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.</i></b></p> <p><b><i>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></b></p>	<p>□</p> <p><i>Reject</i></p> <p><i>Note: Council deleted this Article</i></p>
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	<p><b>4b.</b> <i>In the case of doubt as to whether an instrument constitutes a non-binding instrument or an existing non-binding instrument 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>Accept in part</i>  <b>4b.</b> <i>Where a Member State is in doubt as to whether an instrument constitutes a non-binding instrument or an intergovernmental agreement and thus whether it is to be notified in accordance with Articles 3 and 6 [ ], it shall consult the Commission without delay.</i></p> <p><i>Note: see recital 10 ('without delay'), and the compromise for AM 28 Art. 3(4)</i></p>
<p><i>Article 8</i>  <b>Transparency and confidentiality</b>  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 information, be it commercial or other 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><i>Article 8</i>  <b>Transparency and confidentiality</b>  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 commercial or other 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>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><b>AM 43</b>  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 <b>together with the note regarding any incompatibility with Union law.</b></p>	<p><i>Reject</i></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 <input type="checkbox"/> intergovernmental agreement <b>or</b> <input type="checkbox"/> a new intergovernmental agreement, <input type="checkbox"/> 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 intergovernmental agreement, non-binding instrument or amendment in question:</p> <p>(a) the subject matter;</p> <p>(b) the aim and the scope;</p> <p>(c) the duration;</p> <p>(d) the parties;</p> <p>(e) information on the main elements.</p>		<p>That summary shall contain at least the following information regarding the intergovernmental agreement <input type="checkbox"/> or amendment in question:</p> <p>(a) the subject matter;</p> <p>(b) the aim and the scope;</p> <p>(c) the duration;</p> <p>(d) the parties;</p> <p>(e) information on the main elements.</p>	
	<p><b>AM 44</b> <i>(ea) information regarding provisions falling within the Union's competence in the context of the Common Commercial Policy.</i></p>		<p><i>Reject</i></p>
<p>This paragraph shall not apply to information submitted in accordance with Article 3(1) and (2).</p>		<p>This paragraph shall not apply to information submitted in accordance with Article 3(1), <input type="checkbox"/> (2) <b>and (2a)</b>.</p>	

<p>4. The Commission shall make the summaries referred to in paragraph 3 accessible in electronic form to all other Member States.</p>	<p><b>AM 45</b></p> <p>The Commission shall make the summaries referred to in paragraph 3 accessible in electronic form to all other Member States <i>together with its comments regarding the compliance with the Energy Union strategy.</i></p>	<p>4. The Commission shall make the summaries referred to in paragraph 3 accessible in electronic form to all other Member States.</p>	<p><i>Reject</i></p>
<p>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.</p>	<p><b>AM 46</b></p> <p>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 information received during those negotiations with due confidentiality.</i></p>	<p>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.</p>	<p><i>Accept, with changes</i></p> <p>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. <u>Commission representatives [ ] shall handle sensitive information that relates to negotiations on intergovernmental agreements, and that is received during such negotiations in accordance with Articles 3 and 4 with due confidentiality.</u></p>
<p><i>Article 9</i></p> <p><b>Coordination among Member States</b></p> <p>The Commission shall facilitate and encourage coordination among Member States with a view to:</p>		<p><i>Article 9</i></p> <p><b>Coordination among Member States</b></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 non-binding instruments and striving for consistency and coherence in the Union's external energy relations with producer, transit, and consumer countries;</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 non-binding instruments and considering appropriate action to address those problems and, where appropriate, proposing solutions;</p>	<p><b>AM 47</b></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 <b>guidance and</b> solutions;</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>(b) identifying common problems in relation to intergovernmental agreements [] and considering appropriate action to address those problems and, where appropriate, proposing <b>guidance and</b> 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>AM 48</b></p> <p>(c) on the basis of best practices and in consultation with Member States, developing, <i>by ... [insert the date: 1 year after the date of entry into force of this Decision]</i>, optional model clauses <b>and guidelines</b>, which, if applied, would significantly improve compliance of future intergovernmental agreements and non-binding instruments with Union law;</p>	<p>[]</p>	<p><i>Accept in part: in para (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>(c) supporting, where appropriate, the development of multilateral intergovernmental agreements [] involving several Member States or the Union as a whole.</p>	

	<p><b>AM 49</b></p> <p><i>1a. By ... [insert the date: 1 year after the date of 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><i>Reject</i></p>
		<p><b>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, 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.</b></p>	<p><i>Note: in response to AM 48</i></p> <p><b>2. By ...[1 year 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, 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.</b></p>

<p><i>Article 10</i> <b>Reporting and review</b></p> <p>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.</p>	<p><b>AM 50</b></p> <p>1. By ... <i>[two years after the date of entry into force of this Decision]</i>, 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.</p>	<p><i>Article 10</i> <b>Reporting and review</b></p> <p>1. By ...<i>[three years following the entry into force of this Decision]</i> [], 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.</p>	<p>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.</p>
<p>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.</p>		<p>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.</p>	
<p><i>Article 11</i> <b>Repeal</b></p>		<p><i>Article 11</i> <b>Repeal</b></p>	
<p>Decision No 994/2012/EU is repealed.</p>		<p>Decision No 994/2012/EU is repealed with effect from ...</p>	
<p><i>Article 12</i> <b>Entry into force</b></p> <p>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>.</p>		<p><i>Article 12</i> <b>Entry into force</b></p> <p>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>.</p>	



<i>Article 13</i> <b>Addressees</b>		<i>Article 13</i> <b>Addressees</b>	
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</i> For <i>the Council</i>		<i>For the European Parliament</i> For <i>the Council</i>	
<i>The President</i> <i>The President</i>		<i>The President</i> <i>The President</i>	