



The new IGA Decision (EU) 2017/684

Jacek Liegmann
DG Energy, European Commission

Introduction

12.4.2017

EN

Official Journal of the European Union

L 99/1

DECISION (EU) 2017/684 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 April 2017

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

Decision No 994/2012/EU

(Text with EEA relevance)

- Commission proposal: 16.2.2016
- Adoption and signature: 5.4.2017
- Entry into force: 2.5.2017
- Repealing Decision No 994/2012/EU

Background

- Old IGA Decision **did not ensure compliance** of IGAs with EU law
- Incompatible clauses were only detected after signature and **difficult to change ex-post**
- IGAs often do not contain effective legal mechanism for amendment or termination
- **Non legally-binding instruments** can have similar effect as IGAs

Incompatible clauses detected *ex-post* are difficult to change for legal and political reasons

International law perspective:

- "Pacta sunt servanda": MS are obliged to comply with IGAs obligations (Art. 26 Vienna Convention)
- A third country is by definition not a member of the EU and thus not obliged to comply with EU law

EU Law perspective:

- MS must take all appropriate steps to eliminate incompatibilities between EU law and IGA (Articles 4 (3) TEU and 351 (2) TFEU)

Main features of the new IGA Decision

Scope of application (I)

- **Intergovernmental agreements**
 - => Art. 2 (1); recitals 14, 15
 - => No commercial contracts between undertakings
- **Non-binding instruments**
 - => Art. 2 (3); recital 16
 - => In case of doubts: Art. 3 (6), second subpara

Main features of the new IGA Decision

Scope of application (II)

- **Relationship with Regulation 994/2010**
=> Art. 13 (6) lit. a) of Regulation 994/2010
=> Art. 6 (2) of the new IGA Decision
- **Relationship with the new "Security of Gas Supply" Regulation**
=> No notification of IGAs foreseen

Main features of the new IGA Decision

Mandatory ex-ante assessment of IGAs by the Commission (I)

- **IGAs in the fields of gas and oil**
 - => Art. 3 (2), Art. 5
 - => Voluntary for IGAs in the field of electricity: Art. 3 (4)
- **Examination periods**
 - => First period: 5 weeks following notification
 - => Second period: 12 weeks following notification

Main features of the new IGA Decision

Mandatory ex-ante assessment of IGAs by the Commission (II)

- **Suspensory effect of the Commission's assessment**

=> Art. 5 (4) first subpara

- **Legal effects of the Commission's opinion**

=> Art. 5 (4), second subpara: MS "shall take utmost account"

=> Art. 3 (5), first subpara: MS "should.... explain"

Main features of the new IGA Decision

Mandatory ex-post assessment of IGAs by the Commission

- **All existing IGAs (signed before 2.5.2017)**
=> Art. 6 (1), 2 (2)
- **New IGAs in the field of electricity**
=> Art. 3 (5)
- **Deadline for the Commission: 9 months**
=> Art. 6 (3)

Main features of the new IGA Decision

Voluntary ex-ante or ex-post notification of non-binding instruments

- **Rationale**
=> Recital 16
- **Before or after the adoption of the instrument**
=> Art. 7 (1)
- **Existing and new instruments**
=> Art. 7 (2)

Way forward

- **Development of optional model clauses and guidance by the Commission by 3.5.2018**
=> Art. 9 (2)
- **Revision clause**
=> Art. 10 (2)
=> Possibility to extend the mandatory ex-ante assessment to IGAs in the field of electricity



Thank you for your attention!