

MEPs seek ambitious position on IGA transparency

Andreas Walstad / Brussels

MEPs are trying to reach a consensus on revised intergovernmental agreement rules to pave the way for a far-reaching EU deal.

MEMBERS OF THE European Parliament are trying to find consensus on a new legal framework for transparency in intergovernmental agreements (IGAs), with the aim of reaching an ambitious agreement with the other EU institutions.

Revised IGA rules could allow the European Commission to see agreements with third countries such as Russia before they are signed. The move appears to have broad support in the parliament, which is the co-legislator on the proposal. However, many details will have to be ironed out before MEPs can reach a common position and begin negotiations with the Council of the EU, a process that will possibly start in the autumn.

MEP Zdzislaw Krasnodebski (ECR, Poland) – the file’s rapporteur – is pressing for a legal framework whereby both IGAs and non-legal contracts such as joint declarations will be subject to scrutiny by Brussels before they are signed – so-called ex ante reviews. The current regulatory framework, which was adopted in 2012, only allows the commission to see IGAs after they have been signed.

“IGAs and non-binding instruments [...] need to be examined by the European Commission not only against their compliance with EU legislation but also from the point of view of their impact upon energy security of the union,” Krasnodebski told a debate in the parliament’s Industry, Research and Energy (ITRE) committee in Strasbourg this week.

“That expands the spectrum of the analysis and makes us take into account not only the spirit of EU law but also [processes] of integration [that] cannot be defined – such as solidarity among the member states,” Krasnodebski added.

However, whether the commission has the power to review IGAs in relation to areas other than strictly legal aspects is a contested issue.

“The commission can only review IGAs in relation to their compatibility with EU law. The commission’s powers are legal and are subject to legal review by the Court of Justice of the EU. The Energy Union is not a legal term as it is not defined in any EU legislation



MEP Zdzislaw Krasnodebski believes IGAs should be seen by Brussels before they are signed. (EP)

and thus cannot be a basis for the review of IGAs,” Ana Stanic, a senior energy lawyer with E&A Law, told *Interfax Natural Gas Daily*.

South Stream

IGAs are often the basis for more detailed commercial contracts. Since 2012, the commission has been notified of 124 IGAs, of which 17 may not be in line with EU competition law. One recent example is Gazprom’s now-stalled South Stream pipeline, where Brussels was dissatisfied with many of the IGAs signed between Russia and the transit countries.

“One of the issues with South Stream was that some IGAs gave Gazprom a 50% ownership of the companies which were planning to build the pipeline in EU countries,” said Stanic.

“This, the commission argued, breached Articles 9 and 11 of the Gas Directive, which require a transmission system operator in which a non-EU state has shares to be ownership unbundled. It is interesting that some member states claim they had the commission’s informal clearance before they signed South Stream IGAs and maintain the commission changed its mind after 2012.”

In his draft opinion, Krasnodebski highlighted the stranded South Stream project and said the parties involved were thrown into a difficult situation because deals had already been signed and some investments made by the time the commission blocked the project.

“Member states should eliminate inconsistencies identified by the European Commission during the ex ante evaluation,

and they need to do it before they sign the respective agreement,” Krasnodebski said.

“It avoids a situation whereby parties remain helpless with respect to the current situation, and also in line with the spirit of solidarity of the Energy Union,” he added. “I think this is a very strong position, but justified.”

However, one sticking point is whether the revised IGA rules should include oil and electricity as well as gas. The Council of the EU – which represents the member states – appears to have taken the position that it should only apply to gas.

“It appears that the council has taken the position generally speaking more in favour of keeping the status quo, with ex ante notification being suggested only for gas,” MEP and ITRE Chairman Jerzy Buzek (EPP, Poland) told the debate. “It is our responsibility if we want to go further or not go further. I think Mr Krasnodebski’s report signals that the European Parliament is ready to be stronger in its decisions.”

Not all MEPs are in favour of giving the commission more powers in IGA negotiations.

“It is very dangerous to promote policies restricting the rights of the member states, especially the possibility of member states to form various energy relationships and agreements,” Neoklis Sylikiotis (GUE/NGL, Cyprus) told the debate.

The commission hopes to secure a mandate to begin negotiations with the parliament and council in October. ■

We welcome your comments. Email us at comments@interfax.co.uk.