

Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy'

COM(2011) 540 final — 2011/0238 (COD)

(2012/C 68/12)

Rapporteur: **Mr PEEL**

On 27 September 2011 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 194(2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Decision of the European Parliament and of the Council setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy

COM(2011) 540 final — 2011/0238 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 177 votes to 1 with 10 abstentions.

1. Recommendations and conclusions

1.1 Energy is essential to our standard of living and our quality of life⁽¹⁾. The EESC welcomes the proposed Decision as published by the Commission to set up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy. This we see as an appropriate step towards effectively implementing a common EU external energy policy, in line both with the Lisbon Treaty (Article 194 TFEU⁽²⁾) and with the EU's Energy 2020 Strategy⁽³⁾, as well as with the conclusions on energy of the European Council on 4 February 2011. An effective mandatory information exchange system as proposed - with the Commission playing an active role where Member States are negotiating intergovernmental energy deals with partner countries - is overdue.

1.2 To this end, the Committee also welcomes the inclusion in the proposed Decision of an information exchange of all existing bilateral energy agreements, where the Commission anticipates there may be some 30 intergovernmental agreements between Member States and third countries on oil, some 60 on gas, but fewer on electricity.

1.2.1 The Committee is surprised that such an information mechanism does not yet exist, either between the Commission and Member States, or between Member States themselves,

⁽¹⁾ Giles Chichester, MEP, former EP Committee Chairman, October 2011.

⁽²⁾ Treaty on the Functioning of the European Union.

⁽³⁾ COM(2010) 639 final.

whilst making full allowance for confidentiality. We would observe that whereas currently neither the Commission nor individual Member States can have an overall picture opposite any specific trading partner, key partners certainly will have. It is essential that Europe should act with a united voice in securing an adequate, stable and secure supply of energy in the foreseeable future as well as continue to build an effective Single Market for energy. Estimates suggest that global energy demand – for what are finite reserves – may increase by some 40 % within 20 years, mainly due to increased competition from emerging economies but likely to be complicated further by measures as yet unforeseen to counter the effects of climate change.

1.3 The Committee likewise welcomes the inclusion in Article 5 of the Proposal of the prospect of an official statement from the Commission, where agreements are currently being negotiated, confirming that the project does not infringe internal market rules, provided that this is issued without undue delay and within the time period foreseen. As previously stressed by the Committee in its Opinion on a comprehensive EU international investment policy⁽⁴⁾, where many issues raised here find a ready echo, legal certainty for investors is essential.

1.3.1 We are however concerned by the suggestion that silence by the Commission over four months should indicate consent. We appreciate that for procedural reasons it would not be practical or easy for the Commission to give formal consent in each case but, both because a compatibility investigation

⁽⁴⁾ OJ C 318, 29.10.2011, p. 150-154.

will have been specifically requested and for the sake of clarity, we would urge that a positive, if informal, indication should be given whenever possible, or sufficient early warning where a potential problem requiring further investigation has been identified.

1.4 Agreements on energy need to be guided both by strategic and by commercial considerations. Bearing in mind the need to maintain the principles both of proportionality and of transparency, the Committee nevertheless regrets that working agreements involving commercial operators are not included in the Proposal, not least given the strong message in its Explanatory Memorandum (Chapter 1) about particular shippers gaining a monopoly or near monopoly, which would be contrary to EU law. At the very least we urge the Commission to take active measures so it can readily gain full access to those parts of commercial agreements where it is believed EU regulatory implications may be involved, especially where these might appear as annexes to Intergovernmental Agreements. We note with particular concern potential threats that may arise where strategic partnerships could lead to the enforced adoption of practices imposed by non-EU interests where these may prove to be detrimental.

1.4.1 In addition, we would stress that European consumers will not readily appreciate the difference between external inter-governmental and private energy agreements – the consequences on pricing, the choice of providers, the energy mix and other relevant considerations apply in each case.

1.4.2 The Committee would urge fair but firm action where, inevitably, some third-country suppliers will have strategic and commercial interests that differ from those of the EU. We question how readily achievable the Commission's intention that these suppliers would enhance their compliance with EU internal market rules will prove. Nevertheless the Committee believes that negotiations should be undertaken where possible in a spirit of partnership, frankness and mutual trust.

1.5 The Committee particularly regrets, however, the absence of a full impact assessment, as this would have enabled a better and open anticipation and understanding of Member States' likely reactions. Energy is of course a shared competence between the Commission and Member States, and for many it is closely connected with their understanding of sovereignty. This will work both ways: some will look for extra support where others may see unwarranted interference, especially over losing control over their negotiating mandate and autonomy, with the new mechanism perceived to be a backdoor attempt to transfer energy policy competencies to the EU. The Commission does not enjoy the same powers here as it does over Investment, where similar action is being proposed over Bilateral Investment Treaties (there are many more of the latter), but where caution would also be in the best interest of all.

1.5.1 The Commission needs to show it is mindful of such reservations by Member States that may feel so threatened, and must deal with any transition carefully in order to reinforce acceptance that a key purpose of the proposed exchange of information is to increase Member States' negotiating position vis-à-vis third countries. Full cooperation with Member States' regulatory authorities will be very important here. In welcoming the emphasis on support for Member States in negotiations, it will be essential that early instances where the Commission becomes actively involved in negotiations are demonstrably effective and show sufficient results to help overcome inevitable concerns.

1.5.2 The Committee seeks further clarification as to how Article 7, covering confidentiality, will be put into practice since all essential elements of a business contract (including prices and conditions) are, as trade secrets, confidential. This will be key in gaining acceptance of the Decision. In the absence of a fully established common EU energy policy, Member States and the Commission must continue efforts to build the mutual trust required between all interested parties: this Proposal can only serve as a starting point.

1.6 We question whether the proposal will have no budgetary implications, as asserted. Given the growing demands imposed by European energy policy we do not believe that the foreseen frequent monitoring and advisory activities can be provided without extra resources.

1.7 The Committee would urge that the first interim evaluation should be carried out after two years, rather than four, as by then there will be a sufficient amount of experience and data to assess the effectiveness of the mechanism.

1.8 Turning to the wider implications of the Proposal, mainly covered in the accompanying, much broader, Communication, the Committee welcomes the overarching objective by the Commission to strengthen the external dimension of the EU's overall energy policy. Energy efficiency, security and stability are clearly linked but we regret that in turn the link with the three more established goals of competitive, sustainable and secure energy has not been made totally clear, not least as competitive energy and sustainable energy are not always compatible.

1.8.1 The Committee also regrets that, whilst the Proposal mainly deals with technicalities and procedures, closely related aspects have not been specifically included (and only to a limited degree in the Communication), including diplomatic and socio-economic relations with supplier and transit countries.

1.8.2 Nor is it clear that this Proposal is fully linked and mutually informed with the wider trade related aspects of energy. Trade negotiations of course have been an EU competence for decades; energy here is understood to play a major role in the EU's first and pioneering Deep and Comprehensive Free Trade Agreement (DCFTA) negotiations now close to completion with the Ukraine, a key energy transit country for the EU. DCFTA negotiations are likewise under active consideration with other EU neighbouring countries, both in the Eastern Partnership and in Euro-Med, where energy should also play a key role.

1.8.3 The Committee would specifically urge the Commission that when negotiating the key comprehensive energy aspects of the proposed new EU – Russia agreement, special attention must be paid to the unique position of the three Baltic States as their power networks are synchronised with the Russian rather than any EU system.

1.9 Finally, the Committee deeply regrets that there is no reference in either the Proposal or the Communication for any mechanism to cover the involvement of civil society. This must be rectified. Formal mechanisms are or soon will be in the process of being established for the monitoring of the implementation of recently concluded EU Free Trade Agreements, notably that with South Korea, whilst there is also an active Civil Society Forum in place for the Eastern Partnership (EaP).

1.9.1 However, we do warmly welcome the inclusion of the Committee finally in the work of the EaP thematic platform on energy not least as civil society involvement is already well established in the meetings of the other three.

2. Background

2.1 On 4 February 2011, the European Council agreed that it was necessary for the Union and Member States to improve the coordination of their external energy activities and asked Member States to inform – as of January 2012 the Commission of all their new and existing bilateral energy agreements with third countries.

2.2 In September, the European Commission therefore published two documents on the establishment of an external EU energy policy: A Proposal for a Decision on *Setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy* ⁽⁵⁾ together with a Communication *The EU energy policy: engaging with partners beyond our borders* ⁽⁶⁾.

2.3 It is only the legislative document, setting out the mechanism for implementing the European Council February 2011 conclusions, that has been referred to the Committee

for its Opinion. The Communication covers a much wider remit and only briefly deals with the Proposal. We regret this limitation as the latter covers many key aspects where we would wish to comment, such as renewable energy, energy efficiency and other issues relevant to Sustainable Development, through to EU relationships with Russia, China, other fast growing economies and developing countries in general.

2.3.1 The Commission has made it clear that the Communication will lead to a number of Proposals, of which this proposed Decision is the first, although one of the more important.

2.4 Global energy demand and the EU's dependence on imported fossil fuels are both on the rise. As the Communication points out, the EU as a whole imports 60 % of its gas and over 80 % of its oil, at the same time facing growing competing demand from elsewhere, notably the emerging economies. Global energy demand could increase by 40 % within 20 years whilst unforeseen measures related to climate change may complicate matters further. Many Member States are only able to rely upon a limited number of energy suppliers and are therefore vulnerable to bottlenecks and price volatility, especially for gas and oil. Therefore there is a real sense of urgency to give the EU's external energy policy a much firmer basis. It is essential that Europe should act with a united voice in securing an adequate, stable and secure supply of energy in the foreseeable future as well as continue to build an effective Single Market for energy.

2.5 Few effective instruments for this are yet available. It is anticipated that energy will form a key part of the DCFTA close to completion between the EU and the Ukraine. In turn the Energy Community regulates EU energy relations with nine partner countries ⁽⁷⁾ in Eastern and South-Eastern Europe. A long-term strategic international approach will require much more structured and consistent institutional provisions. The EU Energy 2020 strategy rightly identifies strengthening the external dimension of EU energy policy as a key priority, which the proposed Decision sets out to address.

2.6 The proposed Decision requires Member States to exchange information with the European Commission on their intentions to conclude intergovernmental energy agreements with third countries. Through a compatibility control mechanism (Article 5), the Commission wishes to ensure that such agreements comply with internal market rules. One major benefit would be to create legal certainty for investment ⁽⁸⁾. The Commission stresses that the new mechanism is a coordination measure intended to support Member States and strengthen their negotiating power rather

⁽⁵⁾ COM(2011) 540 final.

⁽⁶⁾ COM(2011) 539 final.

⁽⁷⁾ Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro Serbia, Ukraine and Kosovo.

⁽⁸⁾ This of course must tie in with the new EU comprehensive investment powers and policy resulting from the Lisbon Treaty – see Committee Opinion OJ C 318, 29.10.2011, p. 150-154.

than replace it or limit their availability to conclude such agreements. Article 7 emphasises that there are provisions to guarantee confidentiality of information, an extremely sensitive issue.

2.7 The Committee however regrets that agreements between commercial operators are excluded from its scope, not least given the Commission's clear warning about particular shippers gaining a monopoly or near monopoly, which would be contrary to EU law⁽⁹⁾. At the very least we urge the Commission to take active measures so it can readily gain full access to those parts of commercial agreements where it is believed EU regulatory implications may be involved, especially where these might appear as annexes to Intergovernmental Agreements.

3. The EESC: firm support for a strong European external energy policy based on security of supply

3.1 In March 2011, the Committee issued⁽¹⁰⁾ a clear call for a common EU foreign policy on energy to be rapidly and progressively stepped up. Responding to the then Hungarian Presidency, it pressed for concrete measures so as better to align internal and external policies and for an integrated, consistent approach. It also called for a new institutional footing for energy, a strategic multilateral policy direction and the efficient implementation of privileged energy partnerships with the EU's neighbouring countries.

3.2 Previously in 2009, the Committee⁽¹¹⁾ called for a comprehensive external energy strategy for the EU together with the means to implement it effectively. For the long-term perspective, it identified energy security and climate policy as the two key pillars of the EU's international energy relations. It underlined the importance of the Third Energy Package for decreasing the EU's dependence on external suppliers, but also stressed that sustainable generation and use of energy in third countries had to be encouraged. The firm link between energy and relevant trade policy was underlined, as was the obligation for partner countries to apply market rules such as reciprocity, equal treatment, transparency, the protection of investments, and respect for the rule of law and human rights. With energy set to play an increasingly key role in international disputes, we again stress the pressing need to balance Member States' national interests with a common European voice.

3.3 The Committee⁽¹²⁾ has further stressed that the promotion of renewable energies and the diversification of sources can not be separated from external European action, specifically in the Euro-Mediterranean region. So as to comply

with EU climate policy, harmful subsidies for fossil fuels in partner countries need to be phased out, funding for R&D in renewable energy projects increased and trade in energy-friendly goods and services promoted.

4. The role for civil society

4.1 Civil society's pivotal role in democratic transition, constitutional reform and institution building has again been demonstrated by the failures that led to the widespread uprisings in the Arab world in 2011. The contribution of civil society, and the social partners in particular, both here and in the Eastern Partnership (EaP) countries⁽¹³⁾ must be fully taken into account to ensure transparent and inclusive decision-making processes backed by public acceptability. The Committee deeply regrets that there is no reference in either the Proposal or the Communication to any mechanism to cover the involvement of civil society – despite the fact that the social partners will be heavily involved and will be needed to give essential feedback where problems arise, and the specific reference to 'joint industry-led projects' in the Communication⁽¹⁴⁾. However, we do warmly welcome the inclusion of the Committee finally in the work of the EaP thematic platform on energy not least as civil society involvement is already well established in the meetings of the other three.

4.2 In addition, formal mechanisms are or soon will be in the process of being established for the monitoring of the implementation of recently concluded EU Free Trade Agreements, notably that with South Korea, whilst there is also an active Civil Society Forum in place for the Eastern Partnership (EaP). In energy matters the voice of civil society is just as important. This must include consumers themselves, who often bear a disproportionate impact of market failures, not least for purposes of greater transparency, greater influence and public education.

5. Wider strategic considerations

5.1 The Committee fully supports the Commission in its intention to play a leading role in the establishment of a comprehensive and coordinated EU external energy strategy, and appeals to Member States to support its efforts in a spirit of solidarity and mutual trust.

5.2 The EESC considers solidarity to be a cornerstone of a common EU energy policy not least to help those Member States that lack sufficient bargaining power to secure energy at fair and sustainable prices.

⁽⁹⁾ Explanatory Memorandum (Chapter 1 of COM(2011) 540 final).

⁽¹⁰⁾ OJ C 132, 3.5.2011, p. 15-21.

⁽¹¹⁾ OJ C 182, 4.8.2009, p. 8-12.

⁽¹²⁾ OJ C 376, 22.12.2011, p. 1.

⁽¹³⁾ Ukraine, Moldova, Georgia, Armenia, Azerbaijan and Belarus.

⁽¹⁴⁾ Chapter 1.3, page 7.

5.3 As well as being a major energy consumer, the EU is also a major technology provider, as is recognised, together with having some of the world's highest standards of market transparency and regulation, including in nuclear and other energy safety.

5.4 We note the figures given in the Communication ⁽¹⁵⁾ that Russia, Norway and Algeria account for 85 % of EU natural gas imports and almost 50 % of EU crude oil imports (with OPEC countries supplying 36 % of the latter). Russia also plays a lead role in the supply of coal and uranium to the EU.

5.5 Together with access to raw materials, access to energy is a fundamental strategic consideration for the EU as the worldwide demand for energy soars over the next 20 years. We advocate the establishment of strategic partnerships with the major global energy players (whether suppliers, transit or fellow consumers), which should include cooperation on improving the profitability and uptake of low-carbon technologies, together with promoting energy efficiency and energy renewal and more emphasis ⁽¹⁶⁾ on the security of supply. In particular we look forward to the imminent agreement with Ukraine that should cover security of uninterrupted supply, pricing and other key issues.

5.6 This is especially important for the future of EU trade policy, but we also welcome the reference in the Communication to increased links between energy policy and policies covering the EU's development, enlargement, investment and wider international relations. A prime objective of the Lisbon Treaty was to bring the management of these diverse areas of EU policy closer together. It is essential that EU energy policy is now also fully dovetailed with these policies, not least in the sustainable economic and social development of developing countries.

5.7 We look to our partners in the Energy Community to work towards meeting and respecting EU internal energy market regulations. We are concerned by the Commission's critical assessment last March of this Community's achievements ⁽¹⁷⁾. There is still a considerable gap between political

commitment and actual implementation of the energy acquis by Community members, criticised by the Commission too for maintaining obsolete market designs, hindering investment and distorting competition through continuing to give public suppliers an advantage through regulated prices. We therefore question what instruments are best suited for the EU to manage its relations with its more distant partners and whether it should move away from supplier-buyer relationships towards greater convergence of energy markets.

5.8 Since Russia is currently the EU's leading energy supplier, the Committee urges the Commission to continue to work hard to reach a new EU-Russia Agreement, which must include a comprehensive energy agreement. Russia is equally dependent on the size of the market offered by the EU. Such an agreement would be a major breakthrough and a milestone towards common EU action in external energy relations.

5.8.1 In negotiating such an agreement, special attention must be paid to the unique circumstance of the Baltic States where their power networks are synchronised with the Russian but not with any EU system, thus making these three countries solely dependent on Russia for the stability and the regulation of frequency in their power systems.

5.9 Algeria, Libya and the EuroMed region as a whole also remain a vital area for external energy cooperation.

5.10 Finally, the Committee has recognised that Central Asia ⁽¹⁸⁾ contains 'considerable potential energy reserves that offer Europe additional and complementary (as opposed to alternative) sources of energy', urging that the viability of such links be based on practical and economic reasons, and stressing that EU links with that region 'must be closely and mutually informed with EU involvement with Russia, China and Turkey'. China is particularly important as another major energy consumer, making it essential that here too particular emphasis is laid on close cooperation on energy, technology and climate change related issues.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁵⁾ COM(2011) 539 final, p. 9 (footnote 20).

⁽¹⁶⁾ OJ C 318, 29.10.2011, p. 150-154.

⁽¹⁷⁾ COM(2011) 105 final.

⁽¹⁸⁾ OJ C 248, 25.8.2011, p. 49-54.