

## **IOGP Response to Consultation on the review of the Intergovernmental Agreements Decision**

1. How could the current information mechanism with regard to IGAs be strengthened in terms of contributing to security of energy supply and ensuring the proper functioning of the internal energy market?

**The current Decision 994/2012 enables the Commission to review the legality of Intergovernmental Agreements (IGAs) and to intervene in cases where IGAs are non-compliant with EU law. The Decision strikes the right balance between providing the Commission with the ability to challenge non-compliant IGAs and respecting the process of negotiating and agreeing private commercial contracts (by not imposing obligations on such negotiations). It is important that commercial contracts continue to be excluded from the Decision on IGAs' information exchange mechanism.**

**Commercial contracts and IGAs should be kept as separate entities. Market players should continue to have full responsibility and the commercial freedom to make the necessary contractual arrangements to provide their customers with gas on a commercial basis. Freedom of contract is a basic principle underpinning trade and it should continue to be safeguarded by EU legislation. It should be noted that REMIT has already established a framework for the disclosure of market information, which aims to achieve greater transparency in wholesale energy markets.**

2. What incentives or mechanisms could you envisage that would reinforce the transparency of IGAs? How could we enhance the exchange of information on IGAs prior to their signature?

**IOGP notes that the Commission may already participate as an observer in the negotiation of IGAs, should a Member State request such involvement. Any revised framework for IGAs must not interfere with private commercial negotiations or contracts, nor lead in any way the Commission to interfere in such negotiations. In the event that a company wishes to seek the Commission's advice on an aspect of EU law in the context of its negotiations, this should be voluntary and made possible when both counterparts agree on taking such an approach. Commercially sensitive and confidential information must be respected at all times to ensure the competitive position of private companies.**

3. What incentives or mechanisms could you envisage that would reinforce the compatibility of IGAs with EU energy security provisions? Should a mandatory ex-ante verification mechanism be introduced?

**The existing Decision enables the Commission to review IGAs for consistency with EU law and competition policy. In the event that an IGA is non-compliant, the**

Commission already has the enforcement powers at its disposal to remedy any identified concerns.

Decision 994/2012 gives the Commission the opportunity to check the compatibility of the IGAs and to inform the Member State of any doubts in this respect. IOGP supports the ex post assessment of IGAs, including existing ones, with existing EU legislation. Compatibility with EU law is fundamental since IGAs are important in establishing a stable framework for businesses to undertake long term strategic investments. In order to reinforce the compatibility of IGAs with EU energy security provisions, the Commission could fully use its existing powers and tools to ensure that IGAs do not conflict with existing provisions or do not prevent the full implementation of EU internal energy market rules. Much more could still be done to remove the remaining obstacles to ensure free gas flows. For example, the Commission could ensure that Network Code provisions, particularly CAM and CMP, are implemented across the EU, including those captured by IGAs.

4. If a mandatory *ex-ante* verification mechanism were introduced:
- a) What should be the scope of the ex-ante assessment in terms of the criteria against which IGAs should be assessed?

**N/A**

- b) How should the assessment mechanism be set up? Do you think that the ex-ante verification mechanism that exists for IGAs in the nuclear field (Article 103 Euratom) would be the right model?

**N/A**

- c) At what stage in negotiations should Member States inform the Commission about the planned conclusion of an IGA?

**N/A**

- d) Do you think that mandatory assistance from the Commission in the negotiation of IGAs would be a suitable way of ensuring the compliance of future IGAs with EU law? Please provide reasons for your point of view.

**N/A**

- e) What should the content of any model clauses be? What areas should they cover?

**N/A**

- f) Should such model clauses serve as a guide for Member States? Or should their use have consequences for the assessment process by the Commission?

**N/A**