



Eurogas response to DG ENERGY's Consultation on the review of the Intergovernmental Agreements Decision

16 October 2015

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 significantly strengthened the Commission's oversight of Intergovernmental Agreements (IGAs) relevant to security of supply and the internal market. 994/2012 already obliges Member States to submit to the Commission existing IGAs. This ex-post assessment gives the Commission opportunity to check the compatibility of the IGAs and to inform the Member State of any doubts in this respect. In addition a number of options are provided for, whereby Member States can seek advice from the Commission, during the negotiation stage of new agreements and the possibility is foreseen of improved coordination.

An important aspect of 994/2012 is that it does not create obligations with regard to agreements between commercial entities. Member States, however, may on a voluntary basis communicate commercial agreements that are referred to in IGAs. Companies can also seek guidance from the Commission. The need for confidentiality of sensitive information is underlined.

Eurogas considers that the right balance was struck in 994/2012. This answer to the Consultation reflects our concerns that this balance may be challenged on the provisions on commercial agreements. Market players should have full responsibility and commercial freedom to make the necessary contractual arrangements to provide their customers with gas on a competitive commercial basis, in line with EU law. Freedom of contract is a basic principle underpinning trade. This freedom should be protected by EU legislation.

Eurogas will not comment on the questions with regard to other aspects of IGAs as this is a matter for Member States.

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?

As mentioned above, this response only concerns transparency of commercial agreements in the context of an IGA.

Under the current provisions of Regulation 994/2012, the Commission may act as an observer during negotiations of intergovernmental agreements, and advise the Member State on how to avoid incompatibility with EU law, but this does not apply to agreements between commercial entities. With regard to the suggestion to extend the application of the Decision (994/2012), Eurogas could envisage an approach giving commercial undertakings the right to seek the Commission's advice or participation as an observer, but in no way should it be an obligation nor should an active involvement of the Commission in commercial negotiations be foreseen. An option could be welcome to some companies, especially smaller companies, faced with a dominant supplier. Intergovernmental Agreements, however, should not restrict private contracts on energy deliveries between producers and companies. Companies should be responsible for negotiating their contracts. EU coordination should neither delay the conclusion of inter-governmental agreements nor create a risk of commercially sensitive information being disclosed.

Confidential information should remain protected in accordance with Article 4 of Decision 994/2012. On the other hand, Regulation 1227/2013 on Wholesale Market Integrity and Transparency has already introduced obligations for market participants to report specific information and in this way already contributes to more transparency.

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?

This is a matter for Member States, but as mentioned in 1 the Commission already has the possibilities of oversight and advice.

Decision 994/2012 gives the Commission opportunity to check the compatibility of the IGAs and to inform the Member State of any doubts in this respect. Eurogas supports the ex post assessment of IGAs, including existing ones, with existing EU legislation. In order to reinforce the compatibility of IGAs with EU energy security provisions, the Commission could under existing legislation more effectively employ its existing powers and tools to ensure that IGAs neither conflict with existing provisions nor 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 Codes, particularly CAM and CMP provisions are implemented across all European pipeline networks, including those covered 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?**
- 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?**
- c) **At what stage in negotiations should Member States inform the Commission about the planned conclusion of an IGA?**

See above. N/A

5) 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.

This would seem over intrusive if “mandatory assistance” were to apply to commercial matters, unless the Member State or a company seeks the Commission’s involvement.

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

This is not an issue for Eurogas to answer.

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

See the answer to 6.