

## **Comments on the Commission's Public consultation document on the IGAs**

### **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?
- 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?
- 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?
- 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?

### **General comments with regard to commercial entities:**

Commercial agreements should continue to remain outside the scope of the Decision on IGA's and no obligations should be created with regard to agreements between commercial entities. Commercial entities should continue to have the possibility to request guidance from the Commission, especially in relation to regulatory issues, in order to avoid potential conflicts with Union law. Moreover it may be constructive for commercial entities to have the right to ask the Commission, on a voluntary basis to participate in negotiations for agreements between entities, in the role of observer.

### **With regard to questions 1-4:**

Ensuring the compliance of IGAs with EU's legislation, which is essential for the proper functioning of the internal market and for energy security, is primarily the task of the Commission exercised through close cooperation with Member States and where necessary through infringement actions.

In this context, it would be most constructive for the Commission to continue to play a proactive role in assisting Member States by providing advice on technical issues. Moreover, on the basis of the IGAs which have been notified to the Commission, it could consider

issuing guidelines, assisting Member States to avoid deficiencies and correct frequent incompatibilities.

However, in many cases, IGAs, whose compatibility with EU legislation may be questioned, reflect the relative incoherence of the Union's external energy policy, rather than misunderstanding of the EU's acquis. Therefore the quality of IGAs cannot be improved by focusing exclusively on strengthening the existing Decision's information mechanism.

Given that energy is not an exclusive competence of the Union, any amendment to the existing Decision should be strictly consistent with the division of powers between the Commission and the Member States, as defined by the TFEU (article 2). Accordingly, the Commission should continue to monitor compliance as effectively as possible in close cooperation with the Member States and by means of appropriate enforcement action.

**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.**

Member States should have recourse to assistance from the Commission on a voluntary and ad-hoc basis. However, we do not consider assistance from the Commission should be mandatory. Many IGA's include issues which do not fall within the competence of the Commission and therefore its presence during negotiations would in any case not be feasible. Moreover provisions of certain IGAs also concern commercial agreements which should continue to remain outside the scope of an EU mechanism for IGAs. In any case, commercial contracts, either between Governments and private undertakings, or between private undertakings should not concern the IGA Decision.

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

**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?**

**Regarding questions 6 and 7:**

Non-mandatory model clauses would be constructive and facilitate the drafting of IGAs in conformity with EU legislation, especially regarding technical aspects of the regulatory framework of the internal market (eg: unbundling, 3<sup>rd</sup> Party access, tariff setting). These do not have to be mandatory. Non-mandatory clauses would serve to guide and assist Member States during negotiations with 3<sup>rd</sup> states and constitute a frame of reference for negotiators.