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International relations & Enlargement,
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Brussels, Belgium

Brussels, October 22nd 2015

Subject: Public consultation on the Intergovernmental Agreements (IGAs) Decision

We welcome the opportunity to respond to the public consultation on the Intergovernmental Agreements Decision (994/2012).

Eni is an integrated oil and gas company operating in over 80 Countries and one of the main gas midstreamers in the European Union.

In our view, the current framework, only adopted three years ago, remains an effective tool to ensure the compliance with EU law of intergovernmental agreements related to the buying of gas from external suppliers.

In light of the European Council Conclusions of the 19th of March, we encourage the European Commission to fully implement the existing Decision by, for instance, developing a set of voluntary guidelines and best practices for Member States negotiating with third countries, and by drafting a voluntary set of model clauses for IGAs.

Furthermore, we agree that rules applying to IGAs should be not be equally applied to the negotiation of contracts between commercial operators. Existing EU legislation, such as REMIT (1227/2011), represents a more suitable framework for the disclosure of market information, and for ensuring transparency in wholesale energy markets.

We remain at your disposal should you need additional information in relation to our response.

Best regards,

Fabio Marchetti

Vice President - Head of European Government Affairs

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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?

Eni supports the full implementation of the current IGAs Decision (994/2012), and the adoption by the European Commission of voluntary guidelines for Member States including, for instance, an EU law compliance test and non-obligatory model clauses.

In Eni's view, the current Decision strikes a sensible balance between the objective of ensuring transparency and compliance of IGAs with EU law and the Member States' sovereign competence in the relations with foreign countries. On the one hand, the current framework already allows the European Commission to identify and challenge non-compliant IGAs. On the other hand, Member States have the opportunity to request support from the European Commission if/when needed in the negotiation of IGAs. Furthermore, the Decision 994/2012 already foresees the adoption of non-obligatory instruments, such as optional model clauses to promote the compliance of future IGAs.

In this respect, Eni urges the Commission to fully implement all the tools provided by the existing Decision, such as optional model clauses to use as a guidance for Member States in ensuring greater consistency and compliance, with limited administrative burden.

Finally, we understand that, in the public debate on the review of the current Decision, some have proposed the extension of the scope to include commercial contracts concluded by private enterprises. This would (i) exceed the scope of the Decision's legal basis, (ii) affect private operators' contractual freedom, (iii) under certain circumstances, might undermine confidentiality of commercial contracts with the risk of distorting competition. Therefore, we believe that commercial contracts should not fall under the scope of the IGAs Decision.



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?

The current IGAs Decision already represents an effective tool to ensure transparency of existing intergovernmental agreements.

It requires Member States to submit existing, new or amended IGAs to the Commission, and provides the opportunity to Member States to ask the European Commission's support in the conclusion of intergovernmental energy-related agreements.

Moreover, the introduction of new mandatory requirements should not introduce any additional administrative burden on Member States.

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 current Decision, if fully implemented, already provides an effective tool to reinforce the compatibility of IGAs with EU energy security provisions. An ex-ante verification would be unnecessary and, potentially, detrimental.

Ex-post evaluations, coupled with best practices sharing and the development of the optional model clauses outlined in Art. 7.c of the current IGAs Decision can strengthen the compatibility of future IGAs with EU energy security provisions. In order to encourage the application of the Decision and to reinforce the compliance of IGAs with EU legislation, the EU could strengthen its dialogue with Member States on this specific issue.

Eni agrees with the Commission in its intent to exclude private commercial agreements from the scope of the current or future IGAs Decision. Accordingly, any incentives or verification mechanisms resulting from the revision of the IGAs Decision should not affect negotiations or agreements between private entities and/or between Governments and private undertakings.



- 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?**

NA.

- 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.**

NA.

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

NA.

- 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?**

NA.