

The Austrian Federal Economic Chamber (AFCO), Wiedner Hauptstraße 63, 1045 Vienna, Austria, is registered with the number 10405322962-08 in the Transparency Register of the European Parliament and the European Commission.



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

October 21, 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?

In our view, the current information mechanism with regard to IGAs is sufficient to ensure the security of supply on the territory of the European Union. Decision 994/2012 allows the Commission to oversee existing IGAs and provides it with the necessary means to effectively intervene in case respective IGAs are not compatible with EU law.

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?

Voluntary notification of IGAs with pending negotiation to the Commission is an effective mechanism in allowing Member States to seek guidance on the negotiation and conclusion of IGAs, as it is in Member State's best interest to ensure full compliance with EU Energy and Competition Law. The Commission could provide a kind of 'checklist' which covers all major topics to meet EU legislation, especially those issues that had been findings in IGAs since 2012. This 'checklist' could be updated (e.g. on a yearly basis) and can support the negotiation of IGAs upfront.

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?

Compatibility with EU energy security provisions is a precondition for Member States in concluding current and future IGAs. Moreover, the Commission has the necessary legal means to reinforce compatibility of concluded IGAs with EU law (i.e. infringement procedures for Member States in case of non-compliance with Third Energy Package, Regulation 994/2010 etc.). Therefore, a mandatory ex-ante verification might prove redundant in this respect.

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

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.

Mandatory assistance from the Commission in negotiation of IGAs might create a situation of breaching Member States' sovereign rights of ensuring security of energy supply on their territory. By way of corroboration with EU Energy Law currently in force and while taking into account the principles of the Energy Union, provisions of Decision 994/2012 are sufficient to incentivize Member States to act in line with the principles of solidarity and an internal EU market. While voluntary assistance from the Commission is a useful tool in negotiation of IGAs, mandatory intervention might exceed the scope of the European energy security framework.

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

Optional model clauses should, if implemented, help the Member States assess the compatibility of IGAs with EU law and avoid such conflicts. In particular, optional model clauses should cover areas of energy security and competition law.

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?

Model clauses should serve as a guide for Member States and should be as flexible as possible, in order to be adaptable to a vast range of particular cases.