
Recommendations on Art. 22 Guidelines

An ERGEG public consultation document

Responding to the document

Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and especially Article 22 thereof aims at the promotion of effective competition and security of supply by creating incentives for efficient investments in new infrastructure projects, while at the same time recognizing the need for non-discriminatory access to relevant infrastructures. ERGEG agrees upon the following guidelines which constitute a harmonized and transparent framework for competent authorities when deciding on exemption procedures.

The underlying Guidelines on Article 22 are designed within the legal framework set by the existing Art. 22. The guidelines should be used by deciding authorities to guide their decisions when considering Article 22 applications. As shown in the analysis report on the European Regulators Experience with Article 22 exemptions of Directive 2003/55/EC [Ref: E07-TNI-01-04]¹, a significant amount of infrastructure projects have either received exemptions or are in the process of requesting exemptions. This shows the need for a harmonized or at least consistent and improved approach for implementing Article 22. This is the aim of the present guidelines

ERGEG invites all interested parties to comment on the issues raised in this paper – and in particular those questions highlighted below. Any comments should be received by **2 May 2008** and should be sent by email to article22@erreg.org.

Following the end of the public consultation period, ERGEG will publish all comments received from stakeholders. Any respondents wishing ERGEG to treat its contribution as confidential should clearly state this in their reply and endeavour to give any confidential material in annexes that can be separated from publishable non-confidential material.

Any questions relating to this document should, in the first instance, be directed to:

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¹ cf. ERGEG's Report on Article 22 Exemptions, Ref: E07-TNI-01-04, 13 September 2007
http://www.erreg.org/portal/page/portal/EREG_HOME/EREG_DOCS/EREG_DOCUMENTS_NEW/GAS_FOCUS_GROUP/E07-TNI-01-04_Art.%2022-AnalysisReport_finalLAST.pdf

Questions for stakeholders

- (1) Do you consider the described general principles and guidelines appropriate to achieve a consistent and transparent framework for competent authorities when deciding on exemption procedures?
- (2) Do you consider the present scope of eligible infrastructure to be too narrow?
- (3) Do you consider open season (or comparable) procedures an important tool in assessing market demand for capacity with respect to determining the size of the project applying for exemption, as well as in the subsequent capacity allocation? Should open season (or comparable) procedures be mandatory?
- (4) Should open seasons also be used to allocate equity?
- (5) Some stakeholders think that Art. 22 should be applied differently to LNG terminals as they may be generally better suitable for enhancing competition and security of supply than other types of eligible infrastructure. What is your point of view on this? If you agree, how should this be reflected in the guidelines?
- (6) Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of competition in gas supply appropriate?
- (7) Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of security of supply appropriate?
- (8) Are the described criteria for the risk assessment appropriate?
- (9) Are the described criteria for assessing whether the exemption is not detrimental to competition or the effective functioning of the internal gas market or the efficient functioning of the regulated system to which the infrastructure is connected appropriate?
- (10) To what extent should consultations with neighbouring authorities be done?
- (11) Parts 3.3.1.1 and 3.3.1.2 of the proposed guidelines deal respectively with partial and full exemptions. Do you consider the described decisions (partial/full exemption) appropriate in safeguarding the goal of Directive 2003/55/EC in making all existing infrastructure available on a non-discriminatory basis to all market participants and safeguarding the principle of proportionality?
- (12) Do you believe that Art 22 exemptions should also benefit incumbents or their affiliates? If yes in what way and to what extent?
- (13) Do you agree that under certain circumstances, deciding authorities should be entitled to review the exemption? How can it be assured that this does not undermine the investment?