

Guidelines on Article 22 – An ERGEG Public Consultation Paper

Introduction to public consultation

Article 22 of 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 allows for exemptions from regulation for major new infrastructure. In a presentation at the Madrid Joint Working Group on 17 July 2007, the European Commission identified the following shortcomings of the current Article 22:

- Vague definition of the exemption criteria which gives room for substantial political discretion leading to uncertainty and unpredictability for investors
- Uncertainty on legal decisions for regulators due to need for interpretation
- Negative impact of varying practices in the interpretation and application of the Article 22 criteria on competition and SoS

ERGEG carried out a survey on regulatory practices to apply Article 22 in 2007. The report stated that there is varying practise in the application and interpretation of Article 22 (e.g. concerning the definition of market power, definition of affected markets, duration of exemption, application of open season procedures) as well as widespread application of Article 22, making exemptions the rule rather than the exception, as all requests were eventually granted.

The European Commission has announced that it will publish a commission staff working document on Article 22 of Directive (EC) No 2003/55 and Article 7 Regulation (EC) No 1228/2003. This document aims to provide information on the Commission's assessment of decisions taken by national regulatory authorities or Member States with regards to exemptions under Article 22 of the Gas Directive and Article 7 of the Electricity Regulation.

The ERGEG Guidelines on Article 22 have been drafted as advice to the Commission and may eventually feed into the Commission's staff working document. It is ERGEG's aim to provide guidance on the application of the criteria of Article 22 in order to provide deciding authorities with a clear framework for assessing exemption requests. Both documents, i.e. the Commission's staff working document and ERGEG's Guidelines on Article 22, are not contradictory. Rather, they provide for transparency and guidance to regulatory authorities and market participants to facilitate the procedures for assessing exemptions.