



Commission's draft staff working document on Art. 22 ERGEG's initial view

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1. ERGEG's draft Guidelines on Art. 22

- **Key issues**
- **Early results from ERGEG's public consultation**

2. Initial analysis of Commission's draft working document

- **Comparison between both documents**
- **Conclusion and suggestions**

EREG's draft Guidelines on Art. 22

- Drafted under **WP 2007**
- Triggered by findings from EREG's **Art. 22 exemptions report**
- Inspired by **NGIIR and Commission's explanatory note**
- **Public consultation** ended 02 May 2008
- **Final version** planned in Summer 2008
- For use by regulators and other authorities deciding on requests under Art. 22

ERGEG's key issues: Prerequisites

- Applications by dominant market players (“**incumbents**”) are to be examined especially critically
- International perspective: Where applicable, applicant has to prove its role in **neighbouring and upstream markets** as well
- **Open seasons** are an important tool, but not in every case
- Better **coordination and cooperation** between deciding authorities
- Timely notification, sharing of information, including outline of planned decision

ERGEG's key issues: Decision

- In some circumstances, principle of proportionality requires issuance of only partial exemption, e.g.
 - in terms of capacity
 - Tariff exemption or
 - Exemption from obligation to offer short-term capacity
(in all cases capacity should be allocated non-discriminatorily, e.g. via open season)
- Full exemption should only be granted where necessary, e.g. in the case of a new entrant with no other means to enter market
- Time limit (duration of exemption)
- Clause for revision where appropriate (under strict conditions, which must be determined ex-ante)

Early results from ERGEG's public consultation

- 28 responses so far (4 of them confidential)
 - 17 suppliers/traders/integrated energy companies
 - 3 TSOs
 - 6 Associations
 - 1 SSO
 - 1 Regulator

- Overall impression:
 - Supportive of ERGEG's initiative to provide guidance in an EU-wide consistent approach for Art. 22

Early results from ERGEG's public consultation

- Most **respondents agree** that:
 - Art. 22 Guidelines should differentiate between interconnectors, storage and LNG (most see this already covered by the case-by-case decision principle)
 - Scope should include “identical” new technology
 - Open Season should not be the only tool and not be mandatory
 - Open Season should not be used for equity
 - In principle, assessment criteria seem appropriate, but there are some detailed objections
 - Exemptions for incumbents should be an exception, but this may change over time as market dominance is the relevant assessment criterion

➤ Widely diverging views on:

- **Exemption regime in general:** Some see exemptions as harmful to the creation of competitive market, whereas most consider them essential
- **Partial exemptions:** Some see them as detrimental to investments, others see them as the clearly preferred option
- **Review / revocation** of exemption: Some welcome the notion, some demand reliability and regulatory stability → defined rules are a must!
- **More clarification** on some detailed points

Comparison: General

<u>Subject</u>	<u>EREGG</u>	<u>COM</u>	<u>Match?</u>
Scope	Gas	Electricity & Gas	X
General	Incentivising investments under regulated regime to be considered before granting exemptions; proportionate and cautious use of exemptions	Incentivising investments under regulated regime to be considered before granting exemptions; cautious use of exemptions	✓
Eligibility	IC, STOR, LNG & CAP increases + other technologies covered by the Directive	IC, STOR, LNG & CAP increases	✓
Partial exemptions (PE)	Capacity (backhauls) TPA rules Combination of both (+ LT contracts); specific examples	Capacity TPA rules Combination of both	X

Comparison: Prerequisites

<u>Subject</u>	<u>EREGG</u>	<u>COM</u>	<u>Match?</u>
Pro security of supply	Diversification, capacity	LNG particularly suitable, capacity, anti-hoarding, short-term reservation	X
Pro competition	High threshold for dominant players	Dominant players require careful scrutiny	✓
Level of risk	Financial risk evaluation; Comparison with regulated framework as risk indicator	Risk of underutilisation, change in costs/tariffs increases risk; Likelihood of monopoly, public funding aids, reduces risk; Comparison with regulated framework, competing projects, as risk indicator	✓
Effective functioning	no adverse effects on system users, end customers and reg. infra.	no negative effects on market, reg. infra, free gas movement and other planned projects competing for same source or corridor	X

Comparison: Conditions

<u>Subject</u>	<u>ERGEG</u>	<u>COM</u>	<u>Match?</u>
Open Seasons (or similar)	recommended, but not in every case (e.g. not for PE from TPA only)	recommended, can be a possible condition	✓
CMPs (UIOLI)	Should apply to all infrastructure	Minimum requirements; leaving open whether this applies to exempted part	✗
Duration	Limited to efficient pay-back-period	Limited to amortisation period or less	✓
Decision Monitoring	List of factors leading to review	Review in case of changes Expiry Date	✓
Amendments / Withdrawal (A/W)	Test whether market predictions hold true, revocation as a last resort	Obligation by applicant to notify any relevant changes A/W possible, if market situation changes or lack of compliance w/ conditions	✗ ✓

EREG's view on the Commission's WD

➤ EREG welcomes

- Generally cautious approach and **prior consideration to investment incentives under regulated system**
- Clear **structure** of working paper: assessment criteria, information, and conditions
- Pragmatic / specific guidance on **security of supply-criteria**
- Pragmatic / specific guidance on **competition-criteria**
- **Risk assessment** through comparison with risk under regulated environment
- Due consideration to **TPA needs**
- **Review**, amendments, withdrawal, including obligation on beneficiary to notify changes
- **Limitation of the validity** of the exemption is conditional upon the start of operation to prevent "exemption hoarding"

EREG's view on the Commission's WD

➤ **EREG recommends:**

- Concretisation of **partial exemptions**, based in particular on the principle of **proportionality** (e.g. backhaul, LT-contracts)
- Cases, where **open season** may not be appropriate (newcomers!)
- Defined **anti-hoarding** rules for all infrastructure (including exempted part)
- More **specific guidance on review**, amendments, withdrawal would be helpful, e.g. by adding EREG's list of factors leading to a review

➤ **EREG aims to achieve harmonisation between its draft Guidelines and the Commission's draft working document, based on a thorough analysis of the responses to the public consultation to avoid different interpretations of Article 22**

Thank You !

- Further information is available at
www.energy-regulators.eu