



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

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## ERGEG's draft Guidelines on Art. 22

- Drafted under **WP 2007**
- Triggered by findings from ERGEG'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

## Early results from ERGEG's public consultation

➤ **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>
<b>Scope</b>	Gas	Electricity & Gas	<b>X</b>
<b>General</b>	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	✓
<b>Eligibility</b>	IC, STOR, LNG & CAP increases + other technologies covered by the Directive	IC, STOR, LNG & CAP increases	✓
<b>Partial exemptions (PE)</b>	Capacity ( <b>backhauls</b> ) TPA rules Combination of both (+ <b>LT contracts</b> ); specific examples	Capacity TPA rules Combination of both	<b>X</b>

## Comparison: Prerequisites

<u>Subject</u>	<u>ERGEG</u>	<u>COM</u>	<u>Match?</u>
<b>Pro security of supply</b>	Diversification, capacity	LNG particularly suitable, capacity, anti-hoarding, short-term reservation	<b>X</b>
<b>Pro competition</b>	High threshold for dominant players	Dominant players require careful scrutiny	✓
<b>Level of risk</b>	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	✓
<b>Effective functioning</b>	no adverse effects on system users, end customers and reg. infra.	no negative effects on market, reg. infra, free gas movement and <b>other planned projects competing for same source or corridor</b>	<b>X</b>

# Comparison: Conditions

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

## ERGEG's view on the Commission's WD

### ➤ ERGEG 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"

## ERGEG's view on the Commission's WD

### ➤ ERGEG 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 ERGEG's list of factors leading to a review

### ➤ ERGEG 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](http://www.energy-regulators.eu)