

**NOTE OF DG ENERGY & TRANSPORT ON DIRECTIVES 2003/54/EC AND
2003/55/EC ON THE INTERNAL MARKET IN ELECTRICITY AND NATURAL GAS**

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE THIRD PARTY ACCESS REGIME

ORIGINAL TEXT

PROPOSED CHANGES

Different types of exemption

Any further conditions included in the exemption should only be applied to the applicant, or to any other companies that hold a direct interest in, or control the investment.

Comment: For clarity, if conditions are included in the exemption then these should only be applied to the companies that hold a direct interest in, or control the project (e.g. the owner, the operator, and the primary capacity holders).

**Criteria for awarding an exemption
(Condition a)**

With regard to the requirement (a) that *the investment must enhance competition in gas supply*, it is difficult to conceive of a case where an exemption could be granted to a new piece of infrastructure that was wholly or partly owned, controlled or likely to have a significant amount of its capacity allocated to a dominant player in one of the markets affected.

*With regard to the requirement (a) that the investment must enhance competition in gas supply **and enhance security of supply, there must be evidence to support this if an exemption were to be granted to a new piece of infrastructure that was wholly or partly owned, controlled or likely to have a significant amount of its capacity allocated to a dominant player in one of the markets affected.***

Comment: Eurogas does not believe that incumbent players should be discriminated against in the exemption process, provided that the other criteria are met. These companies may be best placed to invest in major projects that might not otherwise be able to attract investors with sufficient resources. Moreover, the effect of the offer of additional capacity to the competitive market must be taken into account.

The note should recognise the role that these projects will play in enhancing security of supply.

**Criteria for awarding an exemption
(Condition b)**

For Requirement (b), it is again have to conceive *For Requirement (b), it is again have to*

of a justification for an exemption for a new investment for which the cost could be remunerated through general transmission tariffs with minimal impact on consumers.

*conceive of a justification for an exemption for a new investment for which the cost could be remunerated through general transmission tariffs with minimal impact on consumers **and the investment would in any case be carried out by the transmission system operator.***

Comment: This clarification is needed to allow for new investments that do not qualify as a task of the TSO e.g. gas storage; and equally to ensure that TSOs themselves are not exempted from fulfilling their system development tasks under Article 8.

Criteria for awarding an exemption (Conditions c & d)

The conditions (c) and (d) relating to the legal separation of the infrastructure concerned and those relating to charges make it clear that the portion of the interconnector that is exempt from price regulation should not have any of its costs underwritten through regulated transmission charging.

*The conditions (c) and (d) relating to the legal separation of the infrastructure concerned and those relating to charges make it clear that the portion of the **infrastructure** that is exempt from price regulation should not have any of its costs underwritten through regulated transmission charging **or any other regulated tariffs for the use of infrastructure.***

Comment: Allows for LNG and gas storage, whilst recognising the choice of procedures in Article 19.

Criteria for awarding an exemption (Condition e)

Similarly, it would be easier to demonstrate that such infrastructure did not create competitive concerns where the developer in question is able to demonstrate that it had offered access to third parties in designing the infrastructure in question, for example through an “open season” process.

*Similarly, it would be easier to demonstrate that such infrastructure did not create competitive concerns where the developer in question is able to demonstrate that it had offered access to third parties in designing the infrastructure in question, **at a minimum** through a **transparent and non-discriminatory** “open season” process.*

Comment: We agree that developers seeking exemptions should hold an open season for other parties to gain access to the new facility at the planning and feasibility stage. The open season should be non-discriminatory with sufficient time for potential users to evaluate and indicate their required capacity reservations.

Supporting information to be provided

The applicant for the exemption bears the burden of the proof to show that the necessary conditions to obtain it are fulfilled.

*The applicant for the exemption bears the burden of the proof to show that the necessary conditions to obtain it are fulfilled **to a reasonable extent; further details may need***

***to be provided by the competent authority
notifying the exemption decision to the
Commission.***

Comment:

The applicant should have responsibility for providing evidence to support the initial application to the competent authority in the Member State in question, under Article 22.1 to 22.2. As noted by the DG TREN in the preceding paragraph on page 6, it is the competent authority in the Member State who provides the information under Article 22.4 to the Commission.