

**Final Joint Decision of the Energy
Regulators on the Exemption Application
of ICGB AD**

Energy and Water Regulatory Commission (Bulgaria)
Regulatory Authority for Energy (Greece)

August 2018

Preface

1. On July 17th 2017, the company ICGB AD submitted to the Energy and Water Regulatory Commission of Bulgaria (EWRC) and to the Regulatory Authority for Energy of Greece (RAE) an *“Application in Accordance with Art. 36 of the Directive 2009/73/EC for the Interconnector Greece-Bulgaria”*, as foreseen by Article 36 of the Gas Directive 2009/73/EC. Consequently, two supplementary documents have been submitted to the Authorities: *“Integration of the assessment of the criteria for grant of exemption after performance of the Market Test (art. 36.6)”* in October 2017, following request for additional information by the NRAs, and *“2nd Integration of the assessment of the criteria for grant of exemption after performance of the Market Test (art. 36.6)”* in April 2018.
2. On 29 May 2018, RAE adopted decision No 483/2018 exempting ICGB AD from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC of the European Parliament and of the Council for the Gas Interconnector Greece-Bulgaria (IGB) pipeline (hereinafter, *“Greek Exemption Decision”*). The Greek Exemption Decision was notified to the European Commission (hereinafter, *“Commission”*) in full on 30 May 2018.
3. On 29 May 2018, EWRC adopted decision No R-VO-1 exempting ICGB AD from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC of the European Parliament and of the Council for the Gas Interconnector Greece-Bulgaria (IGB) pipeline (hereinafter, *“Bulgarian Exemption Decision”*). The Bulgarian Exemption Decision was notified to the European Commission in full on 31 May 2018.
4. Both the Greek Exemption Decision and the Bulgarian Exemption Decision were notified to the Commission together with a document entitled *“Joint Opinion of the Energy Regulators on the Exemption Application of ICGB AD”*, dated May 2018, which forms an integral part of the Exemption Decisions.
5. The Joint Opinion resulted from the agreement reached by the Regulatory Authorities of Bulgaria (EWRC) and Greece (RAE) to review jointly the application and to express the result of this assessment in one single Opinion, based on the criteria of Article 36(1) of Directive 2009/73/EC, supported by the market test results and further considerations agreed among these two authorities.

The Joint Opinion is divided in four Parts:

- Part 1 provides a description of the IGB project, according to the Exemption Application

submitted by ICGB AD, as enriched by information communicated to the Authorities in due course of the assessment of this application until the date of issuing of the joint opinion. The description includes the list of the exemptions requested, the summary of the first phase of the Market Test and a report of information deemed to be relevant for the opinion.

- Part 2 includes further analysis and considerations based on the acquired data, such as an analysis of the Market Test results and an analysis of the impact of the project on the relevant markets and on the competition.
 - Part 3 contains the analysis of the Authorities on how the criteria of Article 36.1 of the Gas Directive are fulfilled, supported by data and considerations in Part 1 and Part 2.
 - Part 4 is the opinion of the Authorities on the Exemption Application and the terms and conditions under which the exemption should be granted.
6. On 25 July 2018, the Commission adopted its decision [C(2018) 5058 (final)] on the exemption of the Interconnector Greece-Bulgaria from the requirements regarding third party access, tariff regulation and ownership unbundling. By its decision the Commission requests:
- The Regulatory Authority for Energy of the Hellenic Republic ('RAE') to amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decision No 483/2018 of 29 May 2018 (the Greek Exemption Decision) notified to the Commission on 30 May 2018.
 - The Bulgarian authority, Energy and Water Regulatory Commission ('EWRC') shall amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decision No R-VO-1 of 29 May 2018 (the Bulgarian Exemption Decision), notified to the Commission on 31 May 2018.
 - The amendments requested by the Commission concern Part 4 of the Joint Opinion and in particular the conditions under point 4.2.
7. For the sake of completeness, the requests of ICGB AD for exemption from the requirements of Directive 2009/73/EC as listed in paragraph 1.4.1 of the Joint Opinion are repeated below:
- "Having regard to the content of the Guidelines and the results of the IGB Market Test that has been concluded with the signature of the ARCA, ICGB requested approval of the following exemptions:*
- (a) Exemption from the unbundling provisions under Article 9 of Directive 2009/73/EC, implemented in Bulgaria through Article 81(c) of the Energy Act and in Greece through Article 76, par. 3 of Greek Law 4001/2011.*

- (b) *Exemption from Third-Party Access (TPA) for quantity equal to the peak assigned through the ARCAs signature (1.57 bNcm/y in firm forward mode) on a 25-year basis in accordance to the results of the 2016-2017 (second) Market Test, as of Article 32 of the Gas Directive 2009/73/EC, implemented in Bulgaria by Article 170, paragraph 1, point 6, Art. 172, paragraph 1 of the Energy Act and in Greece by Article 76, par. 3 of Greek Law 4001/2011;*
- (c) *Exemption from regulated tariffs for both exempted and non-exempted capacities (both forward and reverse flow), under Article 41 (6), (8) and (10) of Directive 2009/73/EC, implemented in Bulgaria by Article 181 of the Energy Act and in Greece by Article 76, par. 3 of Greek Law 4001/2011).*

The above requests are intended and are being made for a period of 25 years from the Commercial Operation Date, equivalent to the duration of the longest of the long-term contracts in accordance with the results of the IGB Market Test.”

- HAVING regard to paragraph 9 of Article 36 of Directive 2009/73/EC,
- HAVING regard to the Commission Decision [C(2018) 5058 (final)] dated 25 July 2018 on the exemption of the Interconnector Greece-Bulgaria from the requirements regarding third party access, tariff regulation and ownership unbundling,

the Regulatory Authorities of Greece and Bulgaria jointly agree on the modification of Part 4 of the Joint Opinion as follows.

This modified Part 4 comprises the Final Joint Decision of the Authorities on the Exemption Application of ICGB AD. All cross references within Part 4 to Parts 1 to 3 refer to the Joint Opinion. Terms and acronyms used in the Final Joint Decision are as defined in pages vi-vii of the Joint Opinion.

Part 4

Authorities' joint decision

This Part contains the decision of the Authorities on the exemption request and the terms and conditions under which the exemption is granted.

With reference to each requested exemption by ICGB AD as described in section 1.4.1 and analysed in the previous sections of the Joint Opinion, the Authorities jointly express their decision as follows.

4.1 Exemption from requirement of Article 9 of the Gas Directive (Unbundling)

ICGB AD is granted an exemption from the ownership unbundling requirements of Article 9 of the Gas Directive (ICGB request under point (a) of §1.4), pursuant of Art.81c of the Energy Act and Art. 61 and 76 of the Greek Energy Law, for a period of 25 years, starting with the Commercial Operation Date (COD), under the following conditions:

1. ICGB AD must be fully certified prior to the COD and not later than 01 July 2020. To this end, ICGB AD shall submit a certification request to the Authorities in accordance with Art.10 of Directive 2009/73/EC, not later than 6 months before this deadline, in order to safeguard that ICGB AD management and administrative bodies' degree of independence from its shareholders. EWRC and RAE will issue a joint decision on the certification of ICGB AD. When deciding on certification, the Bulgarian and Greek NRAs will have to assess the ICGB AD compliance with the unbundling rules according to the ITO model. ICGB AD must meet all the requirements set out in Directive 2009/73/EC Chapter IV, with the exception of the provisions of Art. 22 of the Gas Directive, as these have been thoroughly assessed by the Authorities in the Joint Opinion.

In the event that ICGB AD decide to offer products in accordance with the NC CAM Auction Calendar before the COD, the certification should be completed before any allocation of capacity

takes place. To this end, ICGB AD shall submit a certification request in accordance with Art.10 of the Gas Directive no later than 6 (six) months before the first capacity allocation.

2. ICGB AD has to implement functional unbundling. To this end, ICGB AD shall elaborate and submit to the Authorities for their approval, a Compliance Programme, which will set out measures taken to ensure that discriminatory conduct is excluded and that no commercially sensitive information is communicated to its shareholders. The Compliance Programme should be submitted to the Authorities not later than 6 (six) months before the COD or before the initial capacity allocation according to the auction calendar under NC CAM. The Compliance Officer should be appointed not later than 1 month from the approval of the Compliance Programme by the Authorities. This Compliance Programme shall lay down at least the following:

- (a) Measures to prevent discriminatory conduct in relation to the potential participants, who are not shareholders in ICGB AD;
- (b) The duties of the employees of ICGB AD in the fulfilment of the purposes of the Compliance Programme;
- (c) The person responsible for monitoring the Compliance Programme and submitting to the Authorities an Annual Compliance Report, setting out the measures taken.

4.2 Initial Capacity, forward flow: exemption from the requirement of Article 32 of the Gas Directive (TPA)

The present decision is made with reference to the request under point (b) of §1.4.

ICGB AD should be exempted from the provisions of Article 32 of the Gas Directive for the transmission of natural gas from the entry point of IGB in Greece to the exit point in Bulgaria for a period of 25 years starting from the COD for the amount of firm forward capacity as depicted in Table 7 and Figure 2 below, and under the following conditions:

1. Obligation to offer the IGB Minimum Capacity

ICGB AD shall ensure that it will offer, at all times during the 25 years of the exemption, capacity equal to the IGB Minimum Capacity. The offer of non-exempted capacity to all interested users, at the amount shown in Table 7, should start no later than the Commercial Operation Date of the IGB pipeline. [BUSINESS SECRET]

ICGB AD shall offer interruptible reverse flow capacity for commercial operations as least in a volume equal to the level of the firm forward flow capacity.

2. Obligation to allocate capacity pursuant to Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a Network Code on capacity allocation mechanisms in gas transmission systems

ICGB AD shall allocate capacity beyond the capacity exempted by the third-party access rules by

implementing Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a Network Code on capacity allocation mechanisms in gas transmission systems, as long as they do not contradict to the provisions of the present decision and in particular the conditions set in paragraph 4.4.

3. Obligation to conduct additional market test

ICGB AD shall conduct a market test, no later than three years as of the Commercial Operation Date, in order to investigate the market interest in upgrading the IGB capacity to approximately 5 bcm/y (§1.1.3). ICGB AD shall conduct the market test according to guidelines to be approved by the National Regulatory Authorities. ICGB is obliged to upgrade the pipeline above the Minimum Capacity in order to accommodate the binding capacity requests resulting from the Market Test, taking into account the provisions of points 2 and 3 of §4.4, if its construction is economically viable. If constructed, the additional capacity does not fall under the provisions of the present decision and is not exempted.

Further expansion of the capacity is possible if economically justified and technically feasible.

Period from	Period to	Exempted capacity (Ncm/h/y)	Non-exempted capacity (Ncm/h/y)
1/7/2020	31/12/2020	173 966.55	206 550.45
1/1/2021	30/6/2021	179 673.55	200 843.45
1/7/2021	31/12/2021	179 673.55	200 843.45
1/1/2022	30/6/2022	179 673.55	200 843.45
1/7/2022	31/12/2022	179 673.55	200 843.45
1/1/2023	30/6/2023	179 673.55	200 843.45
1/7/2023	31/12/2023	179 673.55	200 843.45
1/1/2024	30/6/2024	179 673.55	200 843.45
1/7/2024	31/12/2024	179 673.55	200 843.45
1/1/2025	30/6/2025	179 673.55	200 843.45
1/7/2025	31/12/2025	179 673.55	200 843.45
1/1/2026	30/6/2026	173 966.55	206 550.45
1/7/2026	31/12/2026	173 966.55	206 550.45
1/1/2027	30/6/2027	173 966.55	206 550.45
1/7/2027	31/12/2027	173 966.55	206 550.45
1/1/2028	30/6/2028	173 966.55	206 550.45
1/7/2028	31/12/2028	173 966.55	206 550.45
1/1/2029	30/6/2029	173 966.55	206 550.45
1/7/2029	31/12/2029	173 966.55	206 550.45
1/1/2030	30/6/2030	173 966.55	206 550.45
1/7/2030	31/12/2030	162 551.05	217 965.95
1/1/2031	30/6/2031	162 551.05	217 965.95
1/7/2031	31/12/2031	162 551.05	217 965.95
1/1/2032	30/6/2032	162 551.05	217 965.95
1/7/2032	31/12/2032	162 551.05	217 965.95
1/1/2033	30/6/2033	162 551.05	217 965.95
1/7/2033	31/12/2033	162 551.05	217 965.95
1/1/2034	30/6/2034	162 551.05	217 965.95
1/7/2034	31/12/2034	162 551.05	217 965.95
1/1/2035	30/6/2035	162 551.05	217 965.95
1/7/2035	31/12/2035	162 551.05	217 965.95
1/1/2036	30/6/2036	162 551.05	217 965.95
1/7/2036	31/12/2036	162 551.05	217 965.95

1/1/2037	30/6/2037	162 551.05	217 965.95
1/7/2037	31/12/2037	162 551.05	217 965.95
1/1/2038	30/6/2038	162 551.05	217 965.95
1/7/2038	31/12/2038	162 551.05	217 965.95
1/1/2039	30/6/2039	162 551.05	217 965.95
1/7/2039	31/12/2039	162 551.05	217 965.95
1/1/2040	30/6/2040	162 551.05	217 965.95
1/7/2040	31/12/2040	131 044.05	249 472.95
1/1/2041	30/6/2041	131 044.05	249 472.95
1/7/2041	31/12/2041	131 044.05	249 472.95
1/1/2042	30/6/2042	131 044.05	249 472.95
1/7/2042	31/12/2042	131 044.05	249 472.95
1/1/2043	30/6/2043	131 044.05	249 472.95
1/7/2043	31/12/2043	131 044.05	249 472.95
1/1/2044	30/6/2044	131 044.05	249 472.95
1/7/2044	31/12/2044	131 044.05	249 472.95
1/1/2045	30/6/2045	131 044.05	249 472.95

Table 1. Exempted and non-exempted from TPA firm forward capacity per semester of operation, for 25 years starting from COD, in Ncm/h/y.

A load-factor for the calculation of the yearly capacity lower than one, leading to less commercial capacity on offer, may be proposed by IGB, only for duly justified reasons, and shall be under the approval of the Authorities. Any load factor that would lead to a relative increase of the exempted capacity shall result in a proportional reduction of exempted capacity, at least where it is required to ensure that an average level below 50% of the IGB Minimum Capacity is exempted from third party access.

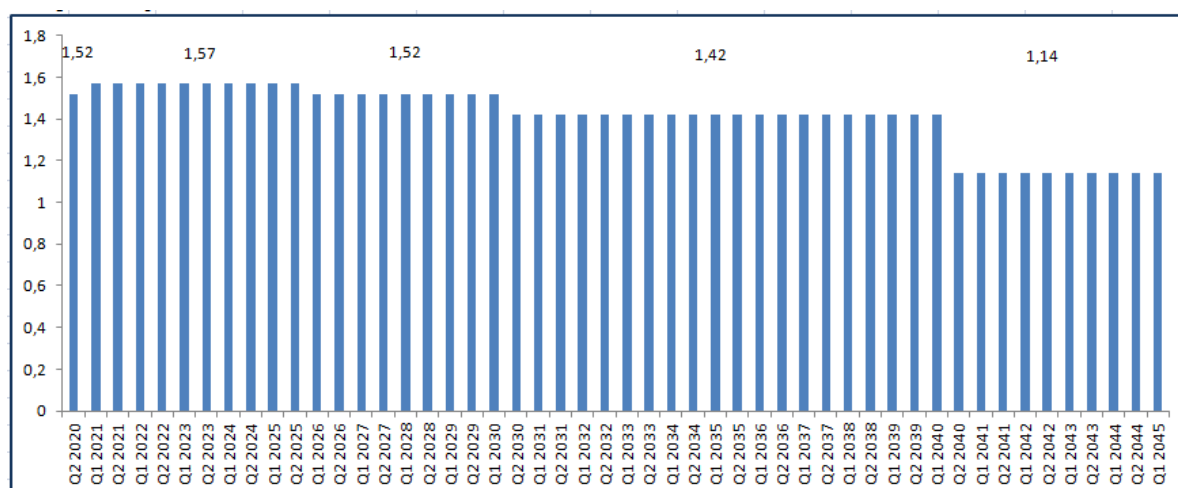


Figure 1. Firm Forward capacity exempted from TPA per semester of operation, for 25 years starting from COD, in bNcm/y.

4.3 Exemption of 100% Forward and Reverse Flow Capacity from tariff regulation under Article 41 par. 6, 8 and 10

In order to ensure the competitiveness of the tariff, as well as ensure transparency and predictability of the tariff for all users of the IGB pipeline, an exemption from the provisions of Article 41.6, 41.8, 41.10 (request under point (c) of §1.4) should be granted to IGB for a period of 25 years starting from the beginning of the Commercial Operation Date for 100% of the Firm Forward Flow Capacity, 100% of Interruptible Forward Flow Capacity and 100% Interruptible Reverse Flow Capacity, under the following conditions:

1. At the latest 3 (three) months after the present decision becomes effective, according to the provisions of the Gas Directive, ICGB shall submit for the approval of the Authorities the final methodology (IGB Tariff Code) for the implementation of the IGB Tariff.
2. The IGB Tariff shall reflect efficient costs, shall be transparent and non-discriminatory and shall follow the principles described in the Joint Opinion.
3. The IGB Tariff Code shall define the pricing mechanism for all capacity products offered by IGB, namely capacity products of different durations of firm and interruptible nature.
4. Initial shareholders' equity nominal IRR will be [BUSINESS SECRET] and its cap value will be [BUSINESS SECRET] Any revenues from capacity bookings that increase IRR above [BUSINESS SECRET] will be returned to the IGB shippers either through tariff reductions of following periods or by a profit sharing mechanism in a non-discriminatory manner.
5. The IGB Tariff Code that shall be submitted for approval to the Authorities shall be accompanied by a reproducible and parameterized tariff model that analyses the tariff methodology as well as the profit sharing mechanism.
6. The IGB Tariff Code shall be approved by a joint decision of the Regulatory Authorities.
7. IGB shall adopt an entry-exit tariff model.
8. Interruptible Reverse Flow Capacity and Interruptible Forward Flow Capacity shall be priced as a percentage of Firm Forward Flow Tariff.
9. No multiplier shall be applied for the calculation of the tariff of short-term capacity products.
10. The ICGB AD shall submit to the Authorities yearly information on its revenues in order for the Authorities to monitor that the conditions are kept.
11. ICGB AD shall ensure that balancing services charges, when applicable, will be objective, transparent, cost-reflective and non-discriminatory and will be published.

12. The IGB Tariff Code shall be published on the Company's website before the date of any offer of capacity takes place.

4.4 Additional Terms to safeguard full compliance to the criteria of Article 36.1

Based on the analysis presented in Part 3 of the present decision, the Authorities impose the following obligations on ICGB AD:

1. Obligation to issue a Network Code

Not later than twelve months before the commercial operation date, ICGB AD shall submit for approval to the NRAs an IGB Network Code. The network code must comply with all the provisions of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and the European Network Codes pursuant to Article 8 (6) of Regulation (EC) No 715/2009, that are not in conflict with the present Decision. To this end, when an amendment of a certain European Network Code occurs, ICGB AD will send to NRAs for their approval a revised version of the IGB Network Code, which will include the provisions of the European Network Code that are not in conflict with the present Decision. The IGB Network Code shall be posted on the ICGB AD website, and shall, at least, include the following:

- Detailed procedures of normal operation, including nomination of capacity at IGB entry and exit points for forward and reverse flow;
- All necessary procedures for the secondary trading, which will be available to all traders;
- Congestion management procedures and the use-it-or-lose-it arrangements;
- Data publication procedures on the functionality and availability of capacity for all pipeline users.

2. Capacity cap for dominant players in Bulgaria

In order to prevent the establishment of a dominant position or to strengthen an existing dominant position in the Bulgarian gas market, the following conditions shall apply:

- (a) Any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Bulgaria, or on the upstream market of supplying gas into Bulgaria, shall not be allowed to reserve more than 40% of the capacity on an IGB exit point in Bulgaria.

- (b) In the event that two or more undertakings together hold a combined market share of at least 80% and each of these undertakings has a market share of more than 20% on any relevant product market for the supply of gas in Bulgaria, or on the upstream market of supplying gas to Bulgaria, EWRC has the right to impose a capacity cap on these undertakings on an IGB exit point in Bulgaria;
- (c) For the purpose of calculation of the market share and the capacity cap percentage, undertakings belonging to one group shall be considered as one undertaking. The market share will be calculated as the average of the last two consecutive years;
- (d) Any direct or indirect long-term gas supply contracts for Bulgaria entered into with an undertaking with a share of 40% or a group of undertakings with a combined market share of at least 80% shall fall under the capacity cap as established in point 2 (a) and 2 (b).
- (e) Where, due to lack of interest by other parties, the capacity cap as imposed in 2 (a) and 2 (b) results in the IGB capacity to be underutilised, EWRC at the request of an interested undertaking, may allow to book capacity beyond the capacity cap as defined in 2 (a) and 2 (b) on an interruptible short-term basis. EWRC decision to that effect shall be published on its web site. The IGB capacity is considered to be underutilised if on average 20% of the IGB capacity is not booked for a period of at least 6 months.

3. Capacity cap for dominant players in Greece

In order to prevent the establishment of a dominant position or to strengthen an existing dominant position in the Greek gas market, the following conditions shall apply:

- (a) Any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas into Greece, shall not be allowed to reserve more than 40% of the capacity on an IGB exit point in Greece.
- (b) In the event that two or more undertakings together hold a combined market share of at least 80% and each of these undertakings has a market share of more than 20% on any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas to Greece, RAE has the right to impose a capacity cap on these undertakings on an IGB exit point in Greece;
- (c) For the purpose of calculation of the market share and the capacity cap percentage, undertakings belonging to one group shall be considered as one undertaking. The market share will be calculated as the average of the last two consecutive years;
- (d) Any direct or indirect long-term gas supply contracts for Greece entered into with an undertaking with a share of 40% or a group of undertakings with a combined market share of at least 80% shall fall under the capacity cap as established in point 3 (a) and 3 (b).

- (e) Where, due to lack of interest by other parties, the capacity cap as imposed in 3 (a) and 3 (b) results in the IGB capacity to be underutilised, RAE at the request of an interested undertaking, may allow to book capacity beyond the capacity cap as defined in 3 (a) and 3 (b) on an interruptible short-term basis. RAE decision to that effect shall be published on its web site. The IGB capacity is considered to be underutilised if on average 20% of the IGB capacity is not booked for a period of at least 6 months.

4. Changing in IGB AD shareholding

If an enterprise, directly or indirectly, acquires joint or sole control over or merges with IGB AD, or with one of its shareholders, IGB AD must notify that change to the relevant NRAs, which change may subsequently be assessed (in cooperation with a national competition authority), in order to verify whether the conditions under which the exemption has been granted continue to be respected.

This provision will be applied in accordance with Article 3 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) and the Commission Consolidated Jurisdictional Notice under the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01).

4.5 Commercial Operation Date and Effect of the Joint Decision

1. Commercial Operation Date - IGB shall be put into operation no later than July 1st 2020.
2. Effect of the present exemption - In line with the provisions of Article 36(9) of Directive 2009/73/EC, the present Decision and the Commission's approval shall lose its effect 2 years from its adoption in the event that construction of IGB has not yet started, and 5 years from its adoption in the event that the infrastructure has not become operational, unless the Commission decides that any further delay is due to major obstacles beyond control of the person to whom the exemption has been granted.

4.6 Governance

1. Regulatory Cooperation - Where the present Decision foresees an action by the Authorities, for the purpose of the implementation of such an action, the Authorities shall endeavor all efforts to act jointly.
2. Dispute settlement - Within 6 (six) months prior to the Commercial Operation Date of the IGB

pipeline, the Authorities shall issue a joint decision on the rules for examining of complaints against the ICGB AD in relation with its obligations under the Exemption Decision during the operation of IGB.

4.7 Sanctions in case of infringement of the exemption decision

The NRAs foresee that any infringement by ICGB of the conditions set out in the exemption decision may result in a sanction imposed by the NRAs on IGB that must be proportionate to the seriousness of the infringement, in accordance to national rules and legislation.

4.8 Amendment and revocation of the exemption decision

1. In case of material change of circumstances which form the basis on which it has been determined that the conditions listed in paragraph 1 of article 36 of the Directive 2009/73/EC have been met, the NRAs may amend or revoke this Exemption Decision.
2. Pursuant to paragraph 9 of 36 of the Directive 2009/73/EC, the NRAs will amend or revoke this Exemption Decision when the European Commission has requested it.
3. The NRAs may also revoke this Exemption Decision where:
 - a. ICGB is found to be in serious breach of one or more conditions laid down in this Exemption Decision.
 - b. ICGB is subject to initiated bankruptcy proceeding or has been adjudicated/declared bankrupt.