

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

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

Whereas:

1. On July 17<sup>th</sup> 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 *“2<sup>nd</sup> 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 May 29<sup>th</sup> 2018, EWRC and RAE (hereafter, the **“Authorities”**) decided on the exemption of the IGB pipeline from the requirements regarding third party access, tariff regulation and ownership unbundling for a period of 25 years, adopting the common document *“Joint Opinion of the Energy Regulators on the Exemption Application of ICGB AD”*, with their decisions N<sup>o</sup> R-VO-1 and 483/2018, respectively. Both decisions were notified to the European Commission.
3. On July 25<sup>th</sup> 2018, the Commission adopted its decision [C(2018) 5058 (final)] on the exemption (hereinafter the *“Commission Decision”*).
4. On August 8<sup>th</sup> 2018, the Authorities took the final decision on the exemption, adopting the *«Final Joint Decision of the Energy Regulators on the Exemption Application of ICGB AD - Energy and Water Regulatory Commission (Bulgaria) and Regulatory Authority for Energy (Greece)»* (hereafter, the **“Final Joint Decision”**), a document jointly written by the Authorities, which amended the Joint Opinion to comply with the Commission Decision (Decisions N<sup>o</sup> P-BO-2 of EWRC and 768/2018 of RAE).
5. In the aforementioned document, an exemption from the provisions of Articles: (i) 9 (Unbundling), (ii) 32 (Third-Party Access) for the part of the Minimum Capacity that has been booked through the Market Test and for which Advanced Reservation Capacity Agreements have been signed, and (iii) 41.6, 41.8, 41.10 (Regulated Tariffs) of Directive 2009/73/EC (hereinafter the *“Gas Directive”*) has been granted to ICGB AD for a period of 25 years starting from the Commercial Operation Date (COD), under the conditions imposed in Part 4 of the Final Joint Decision.
6. Paragraph 1 of Section 4.5 of the Final Joint Decision sets the COD no later than July 1<sup>st</sup> 2020.
7. On April 5<sup>th</sup> 2019, ICGB AD addressed to the Authorities and the European Commission (Directorate General for Energy) the ref. n<sup>o</sup> IV-05/05.04.2019 letter entitled *“Request for*

guidance in the interpretation of clauses 4.2.1 and 4.5.1 from the Joint Exemption Decisions for the Exemption of IGB project awarded on 8<sup>th</sup> of August 2018". In this letter, ICGB states, among others, that it is facing delays in the start of construction, mainly due to appeals against the tender procedures, which were expected to be awarded by the end of May 2019. The company estimates that this delay in the construction start will lead to a delay of approximately 6 months in the COD, which is currently expected in January 2021.

8. On May 2<sup>nd</sup> 2019, the Directorate General for Energy of the European Commission responded to the letter by ICGB AD with the Ares(2019)2938446-02/05/2019 letter, in which it is stated, as regards to the delay in the COD, that the amendment of the Final Joint Decision by the Authorities does not require a new decision by the Commission as long as the deadlines under article 36(9) of the Directive 2009/73/EC are respected.
9. Article 36(9) of the Gas Directive states that an exemption shall lose its effect 2 years from its adoption by the Commission (i.e. 25.7.2020) in the event that construction of IGB has not yet started, and 5 years from its adoption (i.e. 25.7.2023) 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.
10. On June 21<sup>st</sup> 2019, ICGB AD officially requested the delay of the COD through the ref. n° IV-10/21.06.2019 letter entitled "Request for amendment of "Final Joint Decision of the Energy Regulators on the Exemption Application of ICGB AD" (awarded on 8<sup>th</sup> of August 2018)", in which they justify in detail the reasons for the delay.
11. The requested extension falls well within the time period foreseen in the Gas Directive.
12. The Authorities recognize that the delay in the start of the construction has been outside the control of the company.
13. The public procurement for the design, procurement and construction of the pipeline successfully completed on May 14<sup>th</sup> 2019.
14. The Authorities have considered the implications of the requested extension, especially for the shippers that have booked capacity through the Market Test and have signed Advanced Reservation Capacity Agreements (ARCAs) with the company. To this effect, the Authorities requested that ICGB AD communicate the planned change of COD to these shippers.
15. According to electronic messages sent by ICGB AD to the Authorities on 29.8.2019 and 17.9.2019, the shippers have been notified regarding the imminent change of COD and

no objection was presented.

16. On October 10 2019, the above shippers have signed Gas Transportation Agreements with ICGB AD, in which the funneling mechanism towards the definite COD is described.

the Authorities jointly

decide on the following amendments to the document *“Final Joint Decision of the Energy Regulators on the Exemption Application of ICGB AD - Energy and Water Regulatory Commission (Bulgaria) and Regulatory Authority for Energy (Greece)”* as approved by the Decisions № P-BO-2 of EWRC and 768/2018 of RAE:

- i. Paragraph 1 of Section 4.5 shall read: “Commercial Operation Date - IGB shall be put into operation on December 31<sup>st</sup> 2020 (Target COD) and no later than July 1<sup>st</sup> 2021.”.
- ii. The exemption is granted for 25 years starting from the Commercial Operation Date (COD).
- iii. All the deadlines for submission of documents that derive from the COD shall be with respect to the Target COD, i.e December 31<sup>st</sup> 2020. The first sentence of paragraph 4.1.1 shall read: “ICGB AD must be fully certified prior to the COD”.
- iv. The Table of Section 4.2 shall read as follows:

Period from	Period to	Exempted capacity (Ncm/h/y)	Non-exempted capacity (Ncm/h/y)
start of 1st year of COD	end of 1st year of COD	179 673.55	200 843.45
start of 2nd year of COD	end of 2nd year of COD	179 673.55	200 843.45
start of 3rd year of COD	end of 3rd year of COD	179 673.55	200 843.45
start of 4th year of COD	end of 4th year of COD	179 673.55	200 843.45
start of 5th year of COD	end of 5th year of COD	179 673.55	200 843.45
start of 6th year of COD	end of 6th year of COD	173 966.55	206 550.45
start of 7th year of COD	end of 7th year of COD	173 966.55	206 550.45
start of 8th year of COD	end of 8th year of COD	173 966.55	206 550.45
start of 9th year of COD	end of 9th year of COD	173 966.55	206 550.45
start of 10th year of COD	end of 10th year of COD	173 966.55	206 550.45
start of 11th year of COD	end of 11th year of COD	162 551.05	217 965.95
start of 12th year of COD	end of 12th year of COD	162 551.05	217 965.95
start of 13th year of COD	end of 13th year of COD	162 551.05	217 965.95
start of 14th year of COD	end of 14th year of COD	162 551.05	217 965.95
start of 15th year of COD	end of 15th year of COD	162 551.05	217 965.95
start of 16th year of COD	end of 16th year of COD	162 551.05	217 965.95
start of 17th year of COD	end of 17th year of COD	162 551.05	217 965.95
start of 18th year of COD	end of 18th year of COD	162 551.05	217 965.95
start of 19th year of COD	end of 19th year of COD	162 551.05	217 965.95
start of 20th year of COD	end of 20th year of COD	162 551.05	217 965.95

start of 21st year of COD	end of 21st year of COD	131 044.05	249 472.95
start of 22nd year of COD	end of 22nd year of COD	131 044.05	249 472.95
start of 23rd year of COD	end of 23rd year of COD	131 044.05	249 472.95
start of 24th year of COD	end of 24th year of COD	131 044.05	249 472.95
start of 25th year of COD	end of 25th year of COD	131 044.05	249 472.95

v. The Figure of Section 4.2 changes as follows:

