

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

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

May 2021



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° R-VO-1/2018 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° 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. Paragraph 1 of Section 4.5 of the Final Joint Decision had set the COD no later than July 1<sup>st</sup> 2020.
6. In May 2019, ICGB AD requested an amendment of the Final Joint Decision to address a delay of the COD.
7. Through its letter with ref. no Ares(2019)2938446-02/05/2019 the Directorate General for Energy of the European Commission stated that an amendment of the Final Joint Decision by the Authorities regarding the COD 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.

8. 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.

9. Given that:

- i. the requested extension fell well within the time period foreseen in the Gas Directive,
- ii. the Authorities recognized that the delay in the start of the construction has been outside the control of the company, and
- iii. upon the Authorities' request, the shippers that had booked capacity through the Market Test and had signed Advanced Reservation Capacity Agreements (ARCAs) with the company were notified of the imminent change of COD and no objection was raised,

the Authorities decided to amend the Final Joint Decision granting to ICGB AD an extension of the Commercial Operation Date until no later than July 1<sup>st</sup> 2021, through a common decision ratified through Decisions N° P-BO-1/20.03.2020 of EWRC and 568/12.03.2020 of RAE.

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

*Whereas:*

On April 13<sup>th</sup> 2021, ICGB AD requested a second amendment of the Final Joint Decision for a further delay of the COD until July 1<sup>st</sup> 2022, through the ref. n° IV-12/13.04.2021 letter entitled "Request for amendment of "Final Joint Decision of the Energy Regulators on the Exemption Application of ICGB AD", in which they argue that the delayed entry into operation of the pipeline is caused by objective circumstances outside the company's control. More specifically, according to ICGB AD, the measures taken by the national governments of IGB's host countries in order to limit the spread the pandemic triggered by the COVID-19 virus has significantly impacted the construction of the pipeline. As examples:

- prohibitions and/or restrictions on the deployment and/or movement of workers and employees on construction sites in Bulgaria and Greece,
- a 14-day quarantine applied to personnel crossing the state border for a considerable period of time,

- need to apply less efficient construction methods,
- restrictions in the production and transportation of necessary materials, equipment and parts.

All of the above led to a postponement of the main construction schedule from summer to autumn and winter, under adverse conditions, further delaying the works. Moreover, after the completion of construction, the issuance of a permit for the start of activity is required.

The Authorities carefully assessed ICGB AD's request. Based on the above arguments, the Authorities consider that ICGB AD's request for a prolongation of the validity period of the exemption decision in relation to the date by when the infrastructure becomes operational is well grounded for the following reasons:

1. The events described by ICGB AD could not have been predicted at the time when the Final Joint Decision was adopted, as well as when the first prolongation was awarded.
2. The construction of the IGB pipeline has progressed significantly, indicating the company's commitment in the completion of the project. Moreover, the company has taken a number of measures to counteract the negative effects of the pandemic. Therefore, the risk of another delay of the date by when the infrastructure becomes operational beyond July of 2022 can be reasonably ruled out.

The requested extension falls well within the time period foreseen in the Gas Directive, since the infrastructure will still become operational within 5 years from the adoption of the Final Joint Decision (i.e., before 8.8.2023). Therefore, according to letter no. Ares(2019)2938446-02/05/2019 of the Directorate General for Energy of the European Commission, an amendment of the Final Joint Decision by the Authorities regarding the COD does not require a new decision by the Commission.

According to ICGB AD's statement, in anticipation of the Authorities' request, as was the case in the first amendment of the Final Joint Decision, the company has notified the shippers that have signed Gas Transportation Agreements about the imminent delay of IGB's commercial operation, to which no objections have been raised.

#### **the Authorities jointly**

1. Recognize that the delay of the date by when the IGB infrastructure becomes operational is due to obstacles beyond the control of the project developer ICGB AD, that could not have been foreseen by the company when the exemption and its first prolongation were granted.
2. 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 N° P-BO-2/08.08.2018 of EWRC and 768/08.08.2018 of RAE,

and amended by the Decisions № P-BO-1/20.03.2020 of EWRC and 568/12.03.2020 of RAE:

- i. Paragraph 1 of Section 4.5 shall read: “Commercial Operation Date - IGB shall be put into operation no later than July 1<sup>st</sup> 2022.”.
- ii. All the deadlines for submission of documents that derive from the COD shall be with respect to July 1<sup>st</sup> 2022.