

Third amendment to the Final Joint Decision of the Energy
Regulators regarding the Application for the Exemption of
ICGB AD

I. Whereas:

1. On 17.07.2017, ICGB AD filed with the Energy and Water Regulatory Commission of Bulgaria (EWRC) and the Regulatory Authority for Energy of Greece (RAE) an "Application pursuant to Art. 36 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Directive 2009/73/EC) for the Interconnector Greece - Bulgaria". Subsequently, two additional documents were submitted to the national regulatory authorities (NROs): *"Unification of the assessment of the criteria for granting exemption after conducting the Market Test (Art. 36.6)"* in October 2017, following a request from the NROs for additional information, and *"Second unification of the assessment of the criteria for granting exemption after conducting the Market Test (Art. 36.6)"* in April 2018.

2. On 29 May 2018, EWRC and RAE (hereinafter, the "Authorities") decided on the exemption of IGB from third-party access, regulated prices and ownership unbundling for a period of 25 years, adopting the joint document "EWRC and RAE Joint Opinion on ICGB AD's application for exemption, by their decisions under No. P-BO-1 of 29.05.2018 and 483/2018, respectively. Both decisions have been notified to the European Commission.

3. On 25 July 2018, the European Commission adopted a decision [C(2018) 5058 (final)] on the exemption (hereinafter, the "Commission Decision").

4. On 8 August 2018, the Authorities took a final decision on the exemption, by adopting the "Final Joint Decision of the Energy and Water Regulatory Commission of Bulgaria and the Regulatory Authority for Energy of Greece on ICGB AD's application for exemption" (hereinafter, the "Final Joint Decision"), a document prepared jointly by the Authorities, amending the Joint Opinion so as to reflect the Commission Decision (Decisions No. P-BO-2 of 08.08.2018 of EWRC and 768 /2018 of RAE).

5. In the aforementioned document, exemption from the provisions of articles: (i) 9 (ownership unbundling), (ii) 32 (third party access) for that part of the minimum capacity that has been reserved through the Market Test and for which there are capacity advance allocation agreements signed, and (iii) 41.6, 41.8, 41.10 (regulated prices) of Directive 2009/73/EC, was granted to ICGB AD for a period of 25 years, from the commercial operation date (COD), under the terms and conditions specified in item 4 of the Final Joint Decision. Paragraph 1 of item 4.5 of the Final Joint Decision sets the COD for no later than 1 July 2020.

6. In May 2019, ICGB AD requested an amendment to the Final Joint Decision to reflect the delay in the COD. In this regard, by letter Reg. No. Ares (2019) 2938446-02/05/2019, the Directorate General for Energy of the European Commission stated that an amendment to the Final Joint Decision of the Authorities regarding the COD does not require a new Commission decision,

provided that the deadlines under Article 36 (9) of Directive 2009/73/EC are met. By Decision No. P-BO-1 of 20.03.2020 of EWRC and Decision No. 568 of 12.03.2020 of RAE, the Final Joint Decision was amended, and in terms of the COD it was determined that the IGB gas pipeline would be put into operation no later than 31 December 2020 (target COD) and no later than 1 July 2021.

7. In April 2021, ICGB AD requested a second amendment to the Final Joint Decision to reflect further delay in the COD. By Decision No. P-BO-1 of 20.05.2021 of EWRC and Decision No. 424 of 13.05.2021 of RAE, the Final Joint Decision was amended, and in terms of the COD it was determined that the IGB gas pipeline would be put into operation no later than 1 July 2022.

8. By letter Outgoing No. IX-38 of 13.09.2022 (Entry No. E-15-59-1013 of 14.09.2022 of EWRC and Entry I-335725 of 14.09.2022 of RAE), ICGB AD requested a third amendment to the Final Joint Decision to reflect the delay in the COD. The company requested that in terms of the COD, it be determined that the IGB gas pipeline would be put into commercial operation no later than 1 October 2022.

9. ICGB AD argues that delay in the operation of the pipeline is caused by circumstances outside the company's control. More specifically, according to ICGB AD, the main reasons for the delay in putting the IGB gas pipeline into commercial operation are as follows: cumulative failure of the constructor to comply with the construction schedule, due to a significant delay in the delivery of valve stations from the People's Republic of China through the Republic of Italy (for testing) to the construction sites in the Republic of Bulgaria and the Hellenic Republic, as well as a delay in the implementation of the construction schedule due to the organization of the project contractor - AVAX S.A., which failed to compensate for the accumulated delays. At the same time, ICGB AD has taken a number of measures to counteract the delay and exerts pressure to the contractor for faster completion of the construction. Moreover, ICGB AD undertook several activities (e.g. permitting) on behalf of the contractor to speed up the process.

10. With regards to the delay in putting the IGB gas pipeline into commercial operation, ICGB AD gave notices to the persons with whom the company had entered into Gas Transportation Agreements and receipt was acknowledged. No objections were received from the users of exempted capacity in the IGB gas pipeline. Specifically, EDISON S.p.A. expressed its consent to have the COD changed in writing. Bulgargaz EAD also sent a letter containing no objections.

11. Pursuant to Art. 36 (9) of Directive 2009/73/EC, an exemption once given expires 2 years from its adoption by the Commission (i.e. 25.07.2020) in case the construction of the IGB has not yet commenced, and 5 years from its adoption (i.e. 25.07.2023) in case the infrastructure has not started operating, unless the EC decides that any further delay is due to obstacles beyond the control of the person granted the exemption.

II. The Authorities carefully assessed ICGB AD's request to amend the Final Joint Decision, and in terms of the COD be determined that the IGB gas pipeline will be put into commercial operation no later than 1 October 2022, and consider that it is well founded due to the following reasons:

1. The requested extension of the COD falls within the time period under Art. 36 (9) of Directive 2009/73/EC.
2. Users of reserved capacity in the IGB gas pipeline have been notified of the upcoming change in the COD and have not objected to such change.
3. ICGB AD has indicated reasons for the extension of the COD, which could not have been foreseen at the time of the adoption of the final joint decision, as well as during its subsequent two amendments.
4. The delay in the the IGB gas pipeline construction activities is beyond the company's control.
5. The construction of the IGB gas pipeline is almost completely finalized. Therefore, the completion of the project is not at risk.

III. Based on the above arguments, the Authorities jointly decide to:

1. Recognize that the delay in the date on which the IGB gas pipeline will be put into commercial operation is due to reasons beyond the control of ICGB AD.
2. Amend the Final Joint Decision of August 2018 of the national regulatory authorities regarding ICGB AD's application for exemption, adopted by Decision No. P-BO-2 of 08.08.2018 of EWRC and Decision No. 768/2018 of RAE, amended by Decision No. P-BO-1 of 20.03.2020 of EWRC and Decision No. 568 of 12.03.2020 of RAE, respectively by Decision No. P-BO-1 of 20.05.2021 of EWRC and Decision No. 424 of 13.05.2021 of RAE, as follows:
 - 2.1. Paragraph 1 of Section 4.5 shall read: "Commercial Operation Date - IGB will be put into operation no later than 1 October 2022".
 - 2.2. All deadlines, deriving from the COD, will be aligned with the date of 1 October 2022.