

QUESTIONS FOR STAKEHOLDERS
EREGG PUBLIC CONSULTATION ON DRAFT GUIDELINES ON ARTICLE 22 OF DIRECTIVE 55/2003/CE

EDISON

1	<p>Do you consider the described general principles and guidelines appropriate to achieve a consistent and transparent framework for competent authorities when deciding on exemption procedures?</p> <p>Edison welcomes the draft on Guidelines as a contribution for a more transparent and harmonised framework for European regulators in applying criteria provided by article 22 of the gas Directive. The Guidelines shall offer predictability and consistency with the current legislative framework and shall guarantee a stable framework for the decisions already taken by regulators and for the exemptions granted so far, avoiding any prejudice to the progress of ongoing projects and to the associated investments. For this reason the scope for the application of the Guidelines shall exclude projects and infrastructures that have already started the exemption procedure.</p>
2	<p>Do you consider the present scope of eligible infrastructure to be too narrow?</p> <p>National transmission infrastructures should be subject to regulated TPA and the scope of an exemption shall be clearly limited to the interconnectors - as defined by article 2.17 of Directive 55/2003/CE- to LNG and storage facilities.</p>
3	<p>Do you consider open season (or comparable) procedures an important tool in assessing market demand for capacity with respect to determining the size of the project applying for exemption, as well as in the subsequent capacity allocation? Should open season (or comparable) procedures be mandatory?</p> <p>A more detailed clarification is needed on the role of the Open Season procedure according to the two different scenarios envisaged by the guidelines:</p> <ul style="list-style-type: none"> - OS can be performed (on a voluntary basis) as an initial market test in order to assess the additional capacity needed to meet the market demand. In such event, the OS Procedure should not be considered as a mandatory instrument to satisfy tests a) and e) of art.22. However, the outcomes (i.e. the details of persons awarded with transportation capacity) of such an OS procedure shall be known to relevant authorities, before any TPA exemption is granted for such capacity, in order to properly assess the compliance of the proposed project with the tests a) and e) of art. 22. - OS can be conceived as a remedy as to increase the pro-competitive impact of the project being in this case a sale ex ante of a long term product on the regulated capacity. Exemption should be granted only for the part of the project or for the amounts of capacity for which it is possible to identify the users, in order to better assess the pro-competitive impact of the project. In this case the timing and the scope of the exemption should be defined by the competent authority (or the Commission in case of revision). Capacity allocation procedure must be transparent and non discriminatory and should be monitored by the competent regulatory authority, provided in this case that the GGPOS shall not be generally applied.
4	<p>Should open seasons also be used to allocate equity?</p> <p>Open season is not an appropriate instrument for the allocation of equity and could undermine the decision on the investment itself.</p>
5	<p>Some stakeholders think that Art. 22 should be applied differently to LNG terminals as they may be generally better suitable for enhancing competition and security of supply than other types of eligible infrastructure. What is your point of view on this? If you agree, how should this be reflected in the guidelines?</p> <p>The assessment on competition and security of supply in applying article 22 shall be conducted on a case by case basis and shall duly take into account the relevant market and the nature of the investment as requested by the second test foreseen by article 22 of the gas Directive.</p>
6	<p>Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of competition in gas supply appropriate?</p> <p>Edison agrees on the scheme proposed by the guidelines but also stresses that some of the criteria identified in the guidelines (e.g. "Expected behaviour and reaction of companies already active in the market") might be arbitrary or not available to applicants. Edison points out that in order to assess the real effect on competition in the final market by the proposed infrastructure the users of the exempted capacity shall be known before submitting the TPA Exemption application.</p>

7	<p>Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of security of supply appropriate?</p> <p>In assessing the contribution of a project to the security of supply it is necessary to evaluate the contribution in terms of additional capacity, diversification of the routes and diversification of the sources of supply with reference to the size of the relevant market. The access to new sources of supply is not mentioned as a specific requirement in the gas Directive and therefore it should not be considered a binding element for assessing an exemption request even though it can be used by the competent authorities as a further element to complete the assessment as shown by preceding cases.</p>
8	<p>Are the described criteria for the risk assessment appropriate?</p> <p>Before assessing an exemption request the competent regulators for the markets concerned by the infrastructure should always identify a specific regulatory regime (agreed with other relevant member state in the case of Interconnector) providing to Sponsors of infrastructures the certainty of an adequate return on the investment. TPA Exemptions shall be considered only if such specific Regulatory Regime cannot be identified by Regulator(s). Furthermore the competent authority and the Commission have to consider the mechanisms, the timing and the standards of project financing that underlie and determine the feasibility of the project in conducting the risk assessment.</p>
9	<p>Are the described criteria for assessing whether the exemption is not detrimental to competition or the effective functioning of the internal gas market or the efficient functioning of the regulated system to which the infrastructure is connected, appropriate?</p> <p>National legislations and regulatory authorities must guarantee a strict respect of the principles of the European <i>acquis</i>. A case by case evaluation on the principles established in the guidelines (and considering the national legislations of the markets of destination) shall offer a further guarantee of compliance.</p>
10	<p>To what extent should consultations with neighbouring authorities be done?</p> <p>For exemption decisions concerning interconnectors the consultation processes should be binding and detailed between the regulators involved and shall mirror the principles contained in the gas Directive. When, for the purpose of proving the 5 tests foreseen by article 22 of the gas Directive, a project sponsor should indicate the impact on markets different from the one concerned by the infrastructure as an important element, the regulators of the markets concerned shall be consulted.</p>
11	<p>Parts 3.3.1.1 and 3.3.1.2 of the proposed guidelines deal respectively with partial and full exemptions. Do you consider the described decisions (partial/full exemption) appropriate in safeguarding the goal of Directive 2003/55/EC in making all existing infrastructure available on a non-discriminatory basis to all market participants and safeguarding the principle of proportionality?</p> <p>The guidelines shall not define in detail the different typologies of partial exemption (included "full exemptions with conditions") that shall be evaluated and assessed by the competent authority on a case by case basis. Imposing strict conditions (limits on the use of the infrastructure or restrictions on the timing for the exemption) can increase the level of risk attached to the investment and the related rate of return. Congestion management and anti-hoarding mechanisms shall be defined by the project sponsor and shall receive the approval of the regulatory authority.</p>
12	<p>Do you believe that Art 22 exemptions should also benefit incumbents or their affiliates? If yes in what way and to what extent?</p> <p>All the market participants should be allowed to request an exemption. The regulators should then undertake a competition assessment and should impose the necessary conditions and requirements to limit the anti-competitive impacts. Competition law should be enforced as well to prevent any anti-competitive behaviour.</p>
13	<p>Do you agree that under certain circumstances, deciding authorities should be entitled to review the exemption? How can it be assured that this does not undermine the investment?</p> <p>Any exemption review should be anticipated by a consultation process held by the regulatory authority involving the project sponsor and the market participants interested. Exemption reviews should be taken into account only if concrete changes in the conditions upon which the exemption was granted are detected. Measures and consequences of an exemption review shall be made available to the project sponsor together with the decision itself. Exemption reviews and the criteria upon which such process might be given shall be transparent and defined ex ante in order to reduce the uncertainty and the risk for the investors.</p>