

New Gas Infrastructure Investment Regulation (NGIIR)

Draft, Discussion ongoing

Vienna, 5th December 2006

Content:

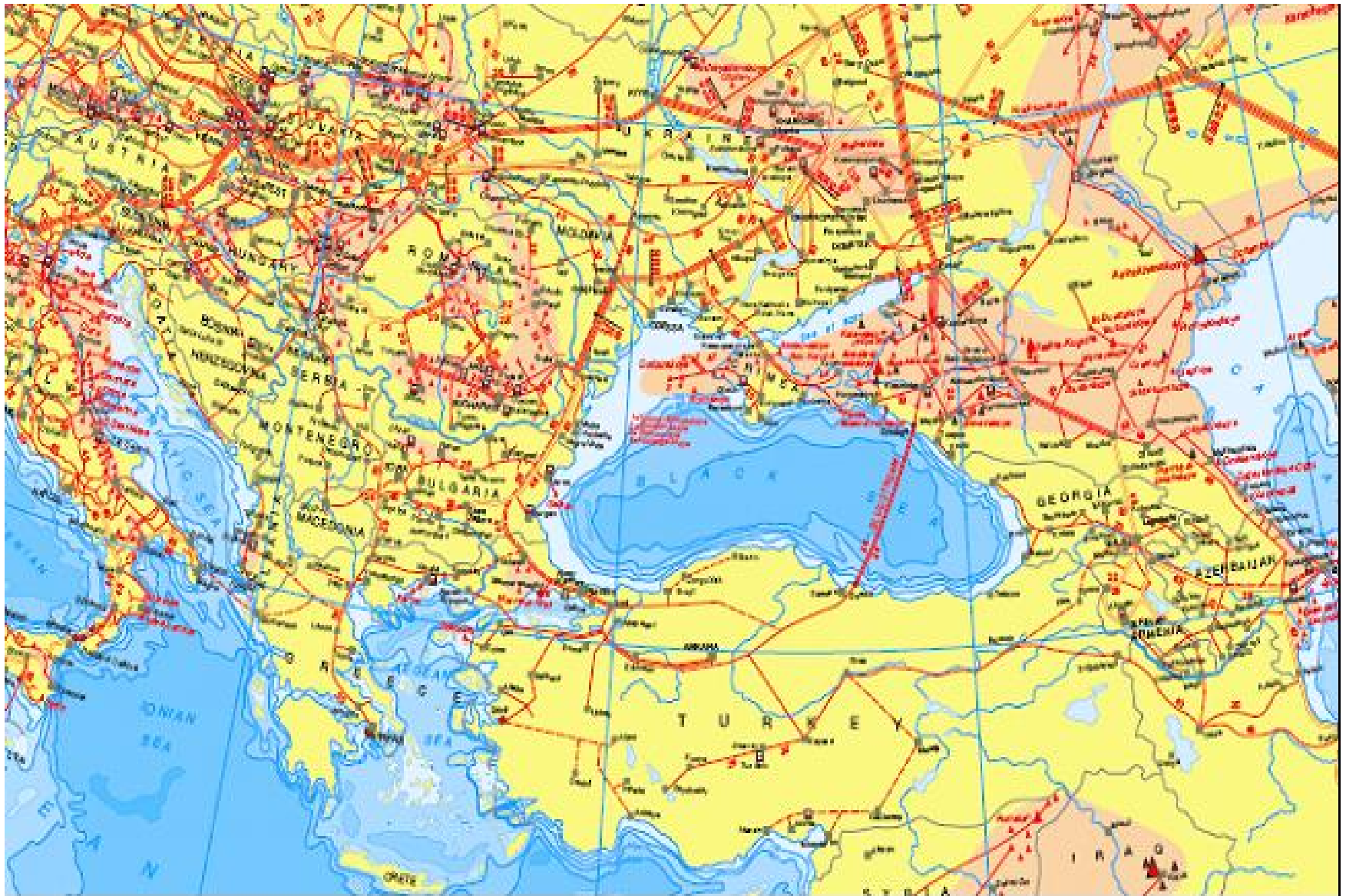
- Legal Framework – Scope
- Examples
- Rules for TPA Regime
- Rules for Exemption

- Treaty Energy Community entered **into force** 1st July 2006

- **Long term objective** of gas market in Energy Community:
 - Effective competition – real benefits
 - Stable regulatory framework – facilitating investments
 - Secure supplies
 - Choice
 - Suppliers market services across Energy Community

- Parties to **implement** Directive 2003/55/EC:
 - within 1 year

Cutout of European Gas Pipeline System



- **Characteristics of SEE (gas):**
 - Small emerging markets Western Balkans; more mature Eastern Balkans
 - Gas networks **poorly** interconnected
 - Limited indigenous production

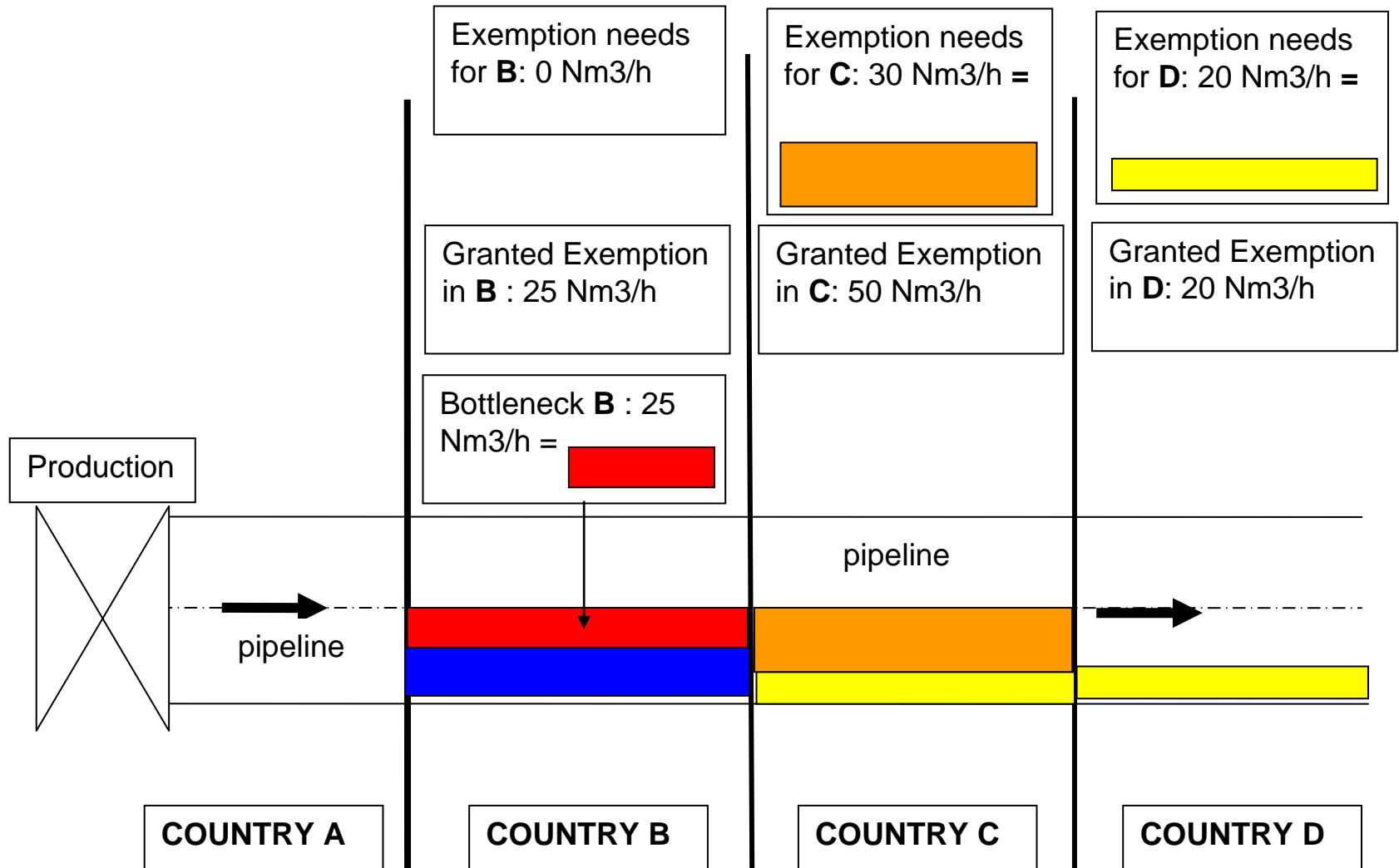
- **New bulk Infrastructure will serve following purposes:**
 - Facilitation of **effective** cross border gas trade
 - **Interconnection** of existing and/or new networks
 - **Diversification** of supplies for the countries of the region

- **NGIIR applicable to new infrastructure:**
 - considered of regional priority interest and
 - in sense of art. 22 of Dir. 2003/55/EC

- Investors claim for **exemption** from TPA for new investments
- Investors request a **stable and reliable** regulatory framework
- **IFIs** need for assessment of projects **harmonised** framework
- **Art. 22 of Dir. 2003/55 provides possibility TPA – exemptions**
 - Assessment on a case by case basis but general criteria to be met
 - **TITLE III, Article 28 of Energy Community Treaty require:**
 - *„...shall take additional Measures establishing **a single mechanism** for the cross border transmission and/or transportation of Network Energy“*

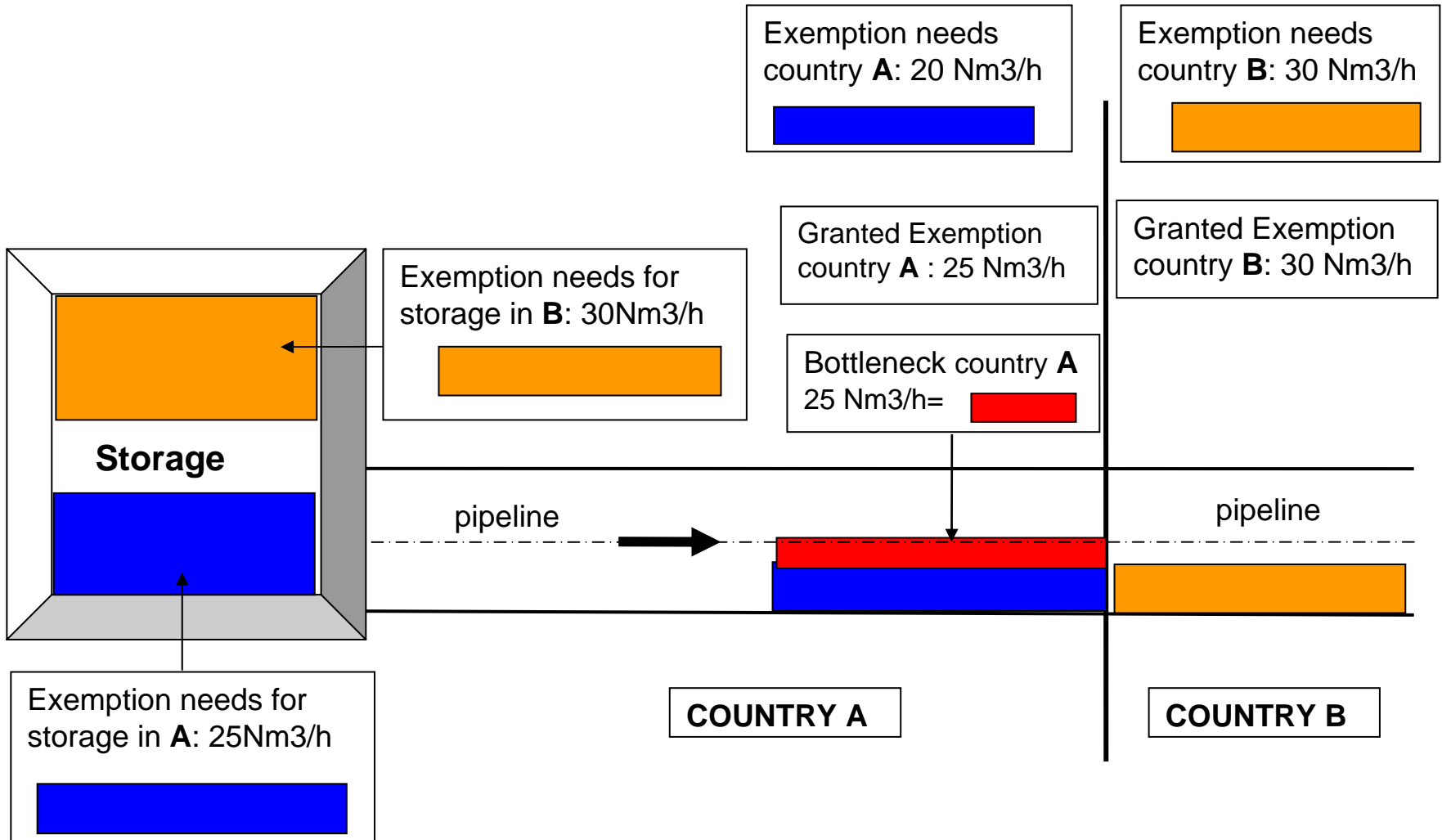
Example A

New Transit Infrastructure – exemption requirements / assessment

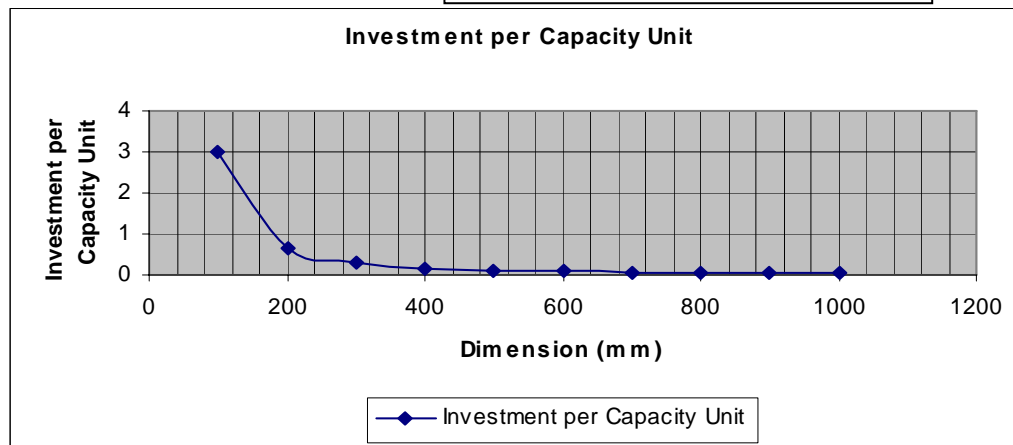
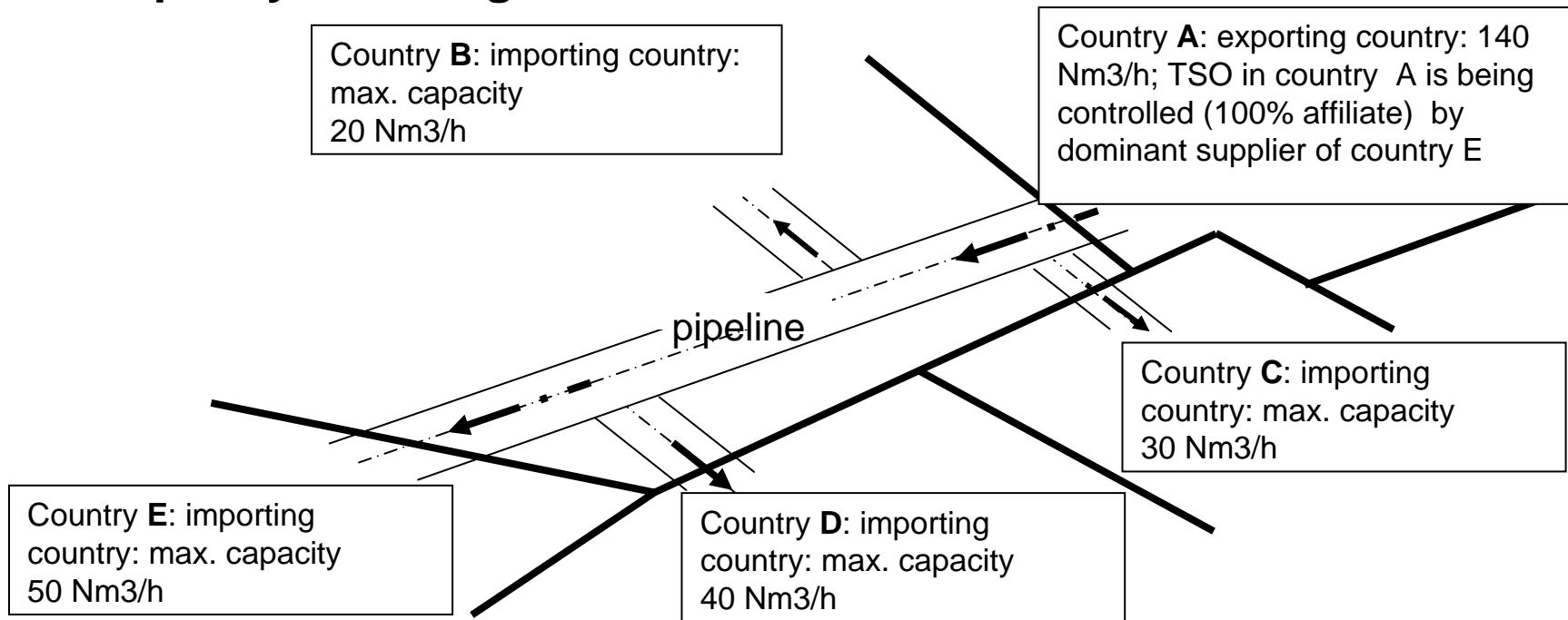


Example B

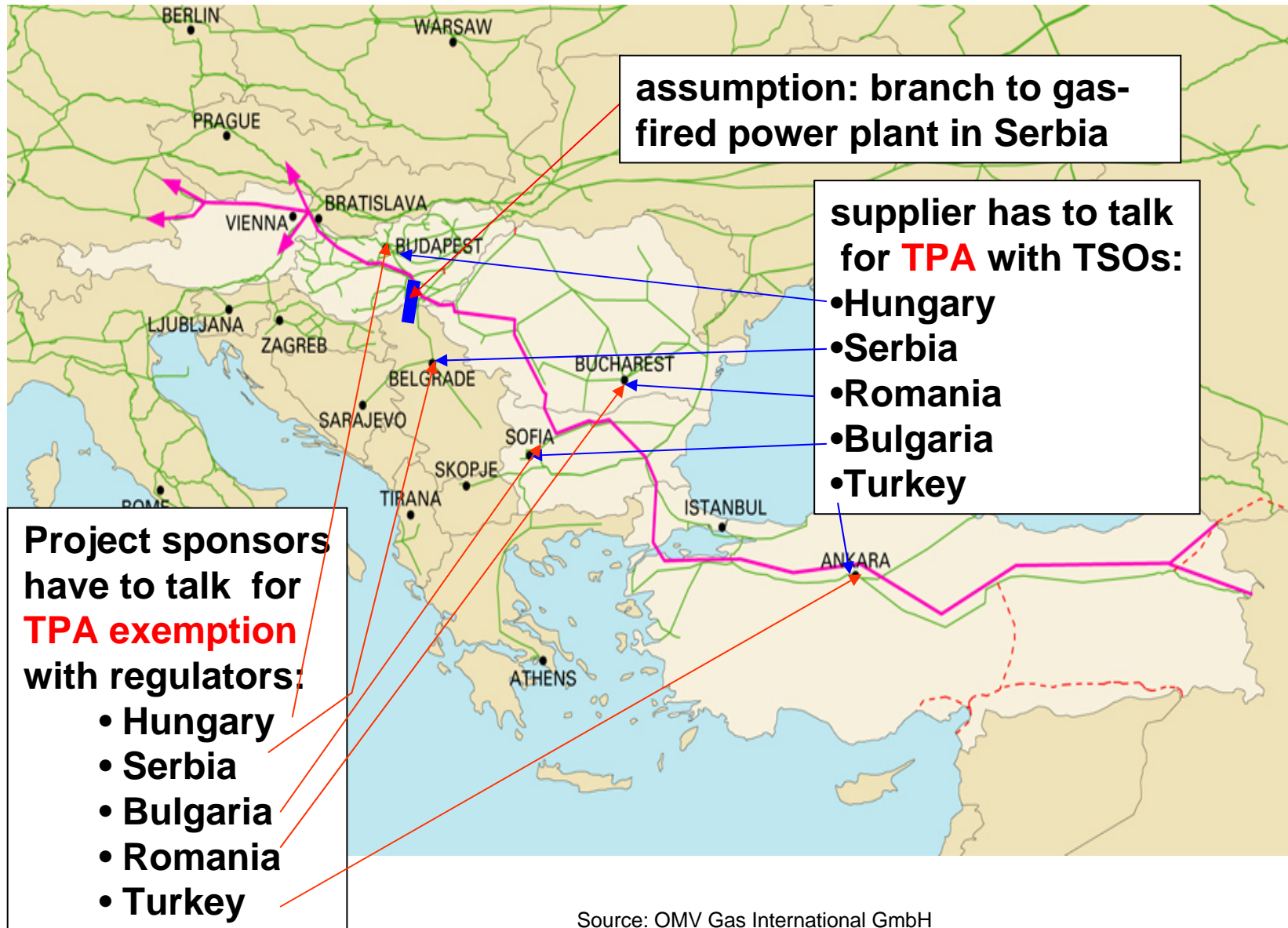
New Storage facility (+ interconnector) – exemption requirements / assessment



Example C: Capacity hoarding / Construction of new infrastructure



Example D: Hurdles to Regional Projects



Source: OMV Gas International GmbH

Example E: Hurdles to Regional Projects



Project sponsors
TPA exemption
LNG; regulators:

- Hungary
- Slovenia
- Austria
- Italy
- Croatia

as suppliers of these countries

TPA exemption storage; regulators:

- Hungary
- Slovenia
- Italy

as suppliers of these countries

Project sponsor
TPA exemption pipe; regulators:

- Hungary
- Slovenia
- Austria
- Italy
- Croatia

Source: Slovenia – Ministry of the Economy; Directorate for Energy

- **Geographic scope: art 26/27 of Treaty**

- **NGIIR intend to provide means:**
 - **co-ordinated** implementation Directive 2003/55/EC
 - in particular implementation/exemption from **TPA**
 - developments/**experience** of EU considered

- **NGIIR focus on:**
 - Issues related to **efficient**/non-discriminatory TPA
 - Appropriate **approach** towards **exemption** from TPA
 - **co-existence** of “exemptions” and liberalised market

- **NGIIR address role of ECRB – TPO:**
 - **ECRB (idea: **single** regulatory decision if **regional** project):**
 - o efficient
 - o effective
 - o best available detailed knowledge to assess the project
 - o taking the common results of the ECRB task forces into account
 - **ECRB **one counter party/interface** to TPO (one stop shop):**
 - o clear competences
 - o clear internal rules of procedure; published
 - o non-discriminatory

- Transmission Project Operator “TPO” (idea; discussion ongoing):
 - o **Legal entity** – act as counterpart to third parties to project (**one stop shop similar to train ticket**)
 - o **responsible** for implementation NGIIR
 - o eventual operation of project
 - o **TPO applies** for exemption, if any, at **ECRB**
- If project **doesn't** cover role of TPO – then rules to involved **TSOs**

- **A Regional Infrastructure Project:**
 - **New source** being provided to Energy Community
 - Subject to **2/more** jurisdictions of the Parties (incl. **Art. 27** – territories)

- **TPA-rules: Dir. 2003/55/EC and compatible with Reg. 1775/2005**

- Rules apply for **entire** pipeline system of TPO

- Network customer shall have **1** contract with TPO

- **Unbundling** requirements (Dir. 2003/55) fully apply to TPO

- If complaints: TPO grant ECRB **right** for inspection

- **Art. 8 of Dir. 2003/55 shall apply**
 - Operation/maintenance of network; **co-operation** with TSOs
 - **Non-discriminatory** access
 - Sufficient **long term** planning
 - Maintaining physical **system balance**
 - **Developing** system to meet required adequate capacity

- **TPO to offer **unbundled** TPA-/ancillary **services** in line with Dir. 2003/55 and compatible with Reg. 1775 (discussion ongoing):**
 - **Range** of services: non-discriminatory
 - **Recovery** of efficiently incurred costs/return on investments
 - **Standard** contracts; services **facilitate** trading re-utilisation of services
 - Sufficient entry/exit points to **increase** competition

- TPO **co-operate** with system operators to develop IAs/OBAs
 - IAs must cover:
 - o Chemical gas **specification**
 - o **Pressure/temperature**
 - o Interconnection points **operation**
 - o **Change** of flow rates
 - OBAs must be used to **pool** small operational imbalances
- TPOs **actively** facilitate interoperability (harmonisation, etc.)
- **Co-ordination** of maintenance
- TPO to offer **long-/short term** capacity, incl. backhaul flows

- TPO to **conduct** open season **prior** to final terms for capacity
- **Role of open season:**
 - **Transport capacity key for competitive market:**
 - o efficient use of existing capacity
 - o appropriate congestion management
 - **TSO to ensure long term ability to meet demand for transportation:**
 - o Long term congestion sorted out by adding new capacity
 - o Identification: SO, regulator, shippers ideally before occurrence
 - **To meet capacity expansion needs based on market assessment:**
 - **Instrument to decide on feasibility of investment:**
 - o conducted by project sponsor
 - o regulator to oversee the process

- **Open season procedure:**

- Market based **assessment of market demand** for specific project
- **Phase of capacity allocation**
- **Prior** to open season sponsor should assess **capacity needs of market**
- **Prior** to open season details of open season **to regulators**

- **Potential users to be informed about proposed project:**
 - **Start/end** of open season
 - **Intake-off take** points and relative amount of **capacity**
 - **products** to be offered
 - Open season should already **inform:**
 - o Product **portfolio** the TPO plans to offer
 - o **Allocation** procedure incl. possibility of future expansion
 - o Rules for **2nd round**, if any

- Sponsor shall offer in procedure capacity according to **initially committed demand**
- Open season do **not preclude** a specific type of capacity allocation
- In all cases **non-discriminatory**, existing and future system users to be treated equally
- Once capacity has been allocated - bidders then **binding agreement**
- Sponsor to **publish** all relevant information
- Sponsor must demonstrate that **terms are reasonable**
- Open season allows **sufficient** time
- **Alternative** to open season : **e.g. long term planning** procedure

- **TPO shall implement/publish allocation mechanism:**
 - Facilitate competition/**avoid barriers**/capacity trading
 - Facilitate **investments**
 - Provide economic **signals** for efficient use
 - Discourage **capacity hoarding**
 - **Flexible/compatible** with market mechanism

- **In case of complaints regulatory authority to review**

- **TPO shall publish at least:**
 - Information about **services offered**, incl. charges
 - Booked and available firm **capacities**; interruptible capacities
 - Physical **usage** of capacities
 - **Tariff** structure/methodology

- TPOs shall calculate **available** capacities on network modelling
- TPO/ECRB **agree ex-ante** regulated tariff methodology
- This agreement can **not** be **amended** over defined period; if change then **derogation** from art 25 (4) of Dir. 2003/55 autom.
- **Tariffs** to be derivated according to **principles**:
 - Tariffs reflect **efficiently incurred costs**, appr. return on investment
 - Tariffs **avoid** cross-subsidies
 - Tariffs **facilitate** trade and promote efficient **use** of network
 - **Backhaul-flows** shall be taken into account
 - No charging principles/tariff structures that restrict **market liquidity**
 - Price of interruptible capacity shall reflect **probability of interruption**

- **TPOs shall design non-discriminatory **balancing** rules:**
 - Charges non-discriminatory, broadly **cost neutral**
 - Provide **incentives** to balance in-put and off take of gas
 - Not **endanger** system stability
 - TPOs to ensure **compatibility** of balancing regimes of other TPOs
 - Market participants shall be provided with **sufficient** information
 - Not prevent **ex ante pooling** and **trading** of imbalance services

- **TPOS shall organize TPA rights to be freely **trade able****

- **Secondary market without obstacles – **standardised** contracts**

- **Provision of **cost reflective** services**

- **Art. 22 of Directive 2003/55 allows for exemptions to TPA**
- **Exemptions to be considered on case by case basis**
- **General criteria to be met**
- **If cross border project regulatory authorities to decide:**
 - In line with **Art. 22(3) e** of Directive 2003/55
 - Consultation with **other** regulatory authorities concerned
 - Final decision shall apply to **whole** new infrastructure
- **Assess projects impact: international best practice techniques**

1. ***“enhance competition in gas supply and enhance security of supply”***
2. ***“The level of risk attached to the investment is such that the investment would not take place unless an exemption is granted”***
3. ***“The infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal from the system operators in whose systems that inter-connector will be built”***
4. ***“Charges are levied on users of that infrastructure”***
5. ***“The exemption is not to the detriment of competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected”***

- Rules how to assess “*enhance competition/ enhance SoS*”:
 - Project partners ensure legal unbundling, *incl. cross border affiliations*
 - Project company must *not be controlled* in terms of merger regulations:
 - Producer/supplier having a *dominant* position in importing/exporting countries
 - Project sponsor must be willing to *engage* in open season:
 - *Before* deciding on capacity
 - *Optional* open season on equity
 - *Mandatory* open season on capacity

- o Open season must be meaningful: **independent** of project company
- o Information: **size** of project
- o Information: costs to accommodate **different amounts of capacity**
- o If lot of demand and commitment, **expand** capacity non-discriminatory
- o Allow all interested, also potential **competitors to join** in
- o **Same** services granted under same tariffs to all parties committing
- If open season offers capacity in **exchange** for obligation to pay tariff:
 - o Tariffs have to be the **same** as for **project sponsors** themselves

- Project sponsors have to **disclose** documents to regulators
- Regulators to ensure that project company does not offer **unattractive** terms
- Regulators to evaluate **adequacy** of an open season
- Project sponsors shall publish **technical** information on capacity
- Unused capacity can be **auctioned** at market prices
- New infrastructure **enhances SoS** as long as:
 - o New infrastructure does not cause **congestion** on domestic transport networks
- Not to **intervene** to tariffs offered in open season if **investor bears the risk**

- TPO to **actively** endeavour discouraging capacity hoarding:
 - o Network users entitled to **re-sell** unused capacity on secondary market
 - o TPO to organize a **bulletin board**
 - o TPO shall install **UIOLI**
 - o Provisions compatible with **Reg. 1775**; as defined in explanatory notes apply
 - o Except firm UIOLI in case open season has been undertaken and TPO has built at least capacity requested by **all committing users**

- Rules how to assess “*level of risk is such that investment would not take place*”:
 - Regulatory authority will determine that project passes test if:
 - o It is more efficient to let **investors bear** the risk

- Rules how to assess “*Infrastructure owner separated at least legally from operator in whose system inter-connector will be built*”:
 - Sufficiently covered by test “sponsor structure/ownership”

- Rules how to assess “***charges are levied on users of that infrastructure***”:
 - No additional guidelines since project sponsors will already have the obligation to provide contracts showing terms with users

- Rules how to assess “***detriment to competition or functioning of internal market or efficient functioning of regulated system, infrastructure is connected to***”:
 - If new infrastructure creates **congestion** on existing regulated system the project sponsor shall **pay for upgrades** necessary to relieve congestion
 - The project will not cause **constraints** on regulated system requiring investments having a significant **adverse** effect on regulated tariffs

- In any case, **even** when **exemption** is **granted** respective **TPA** provisions shall apply (Dir.2003/55 and compatible with Reg.1775)
- If exemption not granted to backhauls then **TPA for backhauls**
- If Regional Infrastructure Project: ECRB to distinguish between importing countries that lie further **up- or downstream** on route
- ECRB to consider potential **interaction** between exemption requirements on the relevant markets
- TPO to apply for exemption, if any, at **ECRB** (one stop shop)

- Treaty foresees **regional** approach with:
 - **Stable** regulatory framework
 - Enhance **security of supply**
 - Facilitate **investments**

- **New bulk infrastructure will be developed for region**

- **NGIIR provides means for:**
 - **Co-ordinated** implementation of Directive 2003/55/EC
 - In particular **implementation and/or exemptions** from TPA
 - **Co-existence** of “exemptions” and liberalisation to be ensured

- **Exemptions: case by case basis but general criteria to be met**

- Thus **reduce risks** of investor and IFIs