Provisional text

OPINION OF ADVOCATE GENERAL

HOGAN

delivered on 24 June 2021(1)

Case C-110/20

Regione Puglia

v

Ministero dell'ambiente e della tutela del territorio e del mare,

Ministero dei beni e delle attività culturali e del turismo,

Ministero dello sviluppo economico,

Presidenza del Consiglio dei Ministri,

Commissione tecnica di verifica dell'impatto ambientale,

joined parties:

Global Petroleum Ltd

(Request for a preliminary ruling from the Consiglio di Stato (Council of State, Italy))

(Reference for a preliminary ruling – Directive 94/22/EC – Energy – Conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons – Authorisation for the prospecting of hydrocarbons in a specific geographical area for a particular period of time – Delimitation of the extent of areas covered by one authorisation – Contiguous areas – Grant of several authorisations to one and the same operator – Competitive procedure)

I. Introduction

1. This is a request for a preliminary ruling brought by the Consiglio di Stato (Council of State, Italy; the referring court') concerning the interpretation of certain provisions of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons. (2)

2. In essence, the referring court wants to know whether Directive 94/22 obliges a Member State to set and impose an absolute limit to the geographical extent of an area for which one operator can be granted an authorisation for the activities of prospecting, exploring for and producing hydrocarbons ('E&P'). (3)

3. Before examining the facts and the legal issues which arise, it is first necessary to set forth the relevant legal provisions.

II. Legal framework

A. EU law

4. The fourth and sixth to ninth recitals of Directive 94/22 state:

‘… Member States have sovereignty and sovereign rights over hydrocarbon resources on their territories;

…

… steps must be taken to ensure the non-discriminatory access to and pursuit of activities relating to the prospection, exploration and production of hydrocarbons under conditions which encourage greater competition in this sector and thereby to favour the best prospection, exploration and production of resources in Member States and to reinforce the integration of the internal energy market;

… for this purpose, it is necessary to set up common rules for ensuring that the procedures for granting authorisations for the prospection, exploration and production of hydrocarbons must be open to all entities possessing the necessary capabilities; … authorisations must be granted on the basis of objective, published criteria; … the conditions under which authorisations are granted must likewise be known in advance by all entities taking part in the procedure;

… Member States must retain the options to limit the access to and the exercise of these activities for reasons justified by public interest and to subject to the payment of a financial contribution or a contribution in hydrocarbons, the detailed arrangements of the said contribution having to be fixed in such a way as not to interfere in the management of entities; … these options must be used in a non-discriminatory way; … with the exception of the obligations related to the use of this option, steps must be taken to avoid imposing on entities, conditions and obligations which are not justified by the need to perform this activity properly; … the activities of entities must be monitored only to the extent necessary to ensure their compliance with these obligations and conditions;

… the extent of the areas covered by an authorisation and the duration of the authorisation must be limited with a view to preventing the reservation to a single entity of an exclusive right over an area which can be prospected, explored and brought into production more efficiently by several entities;

…’

5. Article 1(3) of Directive 94/22 defines the term ‘authorisation’ as follows:

‘“authorisation” means any law, regulation, administrative or contractual provision or instrument issued thereunder by which the competent authorities of a Member State entitle an entity to exercise, on its own behalf and at its own risk, the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area. An authorisation may be granted for each activity separately or for several activities at a time.’

6. Article 2 of Directive 94/22 provides:

‘1. Member States retain the right to determine the areas within their territory to be made available for the exercise of the activities of prospecting, exploring for and producing hydrocarbons.

2. Whenever an area is made available for the exercise of the activities set out in paragraph 1, Member States shall ensure that there is no discrimination between entities as regards access to and exercise of these activities.

…’

7. Article 3(1), (2) and (4) of Directive 94/22 deals with the procedure to be followed for the grant of authorisations:

‘1. Member States shall take the necessary measures to ensure that authorisations are granted following a procedure in which all interested entities may submit applications in accordance either with paragraph 2 or 3.

2. This procedure shall be initiated:

(a) either at the initiative of the competent authorities by means of a notice inviting applications, to be published in the *Official Journal of the European Communities* at least 90 days before the closing date for applications;

(b) or by means of a notice inviting applications, to be published in the *Official Journal of the European Communities* following submission of an application by an entity without prejudice to Article 2(1). Other interested entities shall have a period of at least 90 days after the date of publication in which to submit an application.

Notices shall specify the type of authorisation, the geographical area or areas in part or all of which an application has been or may be made and the proposed date or time limit for granting authorisation.

…

4. A Member State may decide not to apply the provisions of paragraph 1 if and to the extent that geological or production considerations justify the granting of the authorisation for an area to the holder of an authorisation for a contiguous area. The Member State concerned shall ensure that the holders of authorisations for any other contiguous areas are able to submit applications in such a case and are given sufficient time to do so.

…’

8. Article 4 of Directive 94/22 has the following wording:

‘Member States shall take the necessary measures to ensure that:

(a) if the geographical areas are not delimited on the basis of a prior geometric division of the territory, the extent of each area is determined in such a way that it does not exceed the area justified by the best possible exercise of the activities from the technical and economic points of view. In the case of authorisations granted following the procedures laid down in Article 3(2), objective criteria shall be established to this end and shall be made available to the entities prior to the submission of applications;

(b) the duration of an authorisation does not exceed the period necessary to carry out the activities for which the authorisation is granted. However, the competent authorities may prolong the authorisation where the stipulated duration is insufficient to complete the activity in question and where the activity has been performed in accordance with the authorisation;

(c) entities do not retain exclusive rights in the geographical area for which they have received an authorisation for longer than is necessary for the proper performance of the authorized activities.’

9. Article 6(2) of Directive 94/22 provides:

‘Member States may, to the extent justified by national security, public safety, public health, security of transport, protection of the environment, protection of biological resources and of national treasures

possessing artistic, historic or archaeological value, safety of installations and of workers, planned management of hydrocarbon resources (for example the rate at which hydrocarbons are depleted or the optimisation of their recovery) or the need to secure tax revenues, impose conditions and requirements on the exercise of the activities set out in Article 2(1).'

10. Article 7 of that directive states:

'Without prejudice to the provisions concerning or contained in individual authorisations and to the provisions of Article 3(5)(b) legal, regulatory and administrative provisions which reserve to a single entity the right to obtain authorisations in a specific geographical area within the territory of a Member State shall be abolished by the Member States concerned before 1 January 1997.'

B. Italian Law

1. Law No 9/1991

11. Decreto Legislativo 25 novembre 1996, n. 625 Attuazione della direttiva 94/22/CEE relativa alle condizioni di rilascio e di esercizio delle autorizzazioni alla prospezione, ricerca e coltivazione di idrocarburi (4) (Implementation of Directive 94/22/EEC on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons, 'Legislative Decree no 625/1996') transposed Directive 94/22 into Italian law. It amended Article 6 of Legge 9 gennaio 1991, n. 9 regarding exploration permits for hydrocarbons (5) (Law No 9 of 9 January 1991, on the hydrocarbons exploration permit, 'Law No 9/1991'), which provides:

'1. The exploration permit shall be granted by decree of the Minister for Industry, Trade and Crafts, after consulting the Technical Committee for Hydrocarbons and Geothermal Energy and the relevant region or the autonomous provinces of Trento or Bolzano, in agreement with the Minister for the Environment and the Minister for the Merchant Navy, according to their respective spheres of competence …

2. The area covered by the exploration permit shall be such as to permit the rational development of the exploration programme and in any case may not exceed 750 km^2; adjacent land and sea areas may be included in the area covered by the permit.

3. If the Minister for Industry, Trade and Crafts does not consider the area requested to be of a sufficient dimension or rational configuration for the purpose of optimal exploration, he may decide not to grant the exploration permit until it is possible to combine the area under consideration with neighbouring areas.

4. The duration of the permit shall be six years.

5. The permit holder shall be entitled to two successive extensions of three years each, provided he has fulfilled the obligations under the permit.

6. The permit holder may be granted a further extension if … works are still in progress … for reasons not attributable to his inactivity, negligence or incompetence …'

2. Decreto Direttoriale 22 marzo 2011 / Decreto Direttoriale 15 luglio 2015

12. The procedure for the grant of exploration permits was governed by administrative decrees adopted by the Ministero dello Sviluppo Economico (the Italian Ministry of Economic Development, 'the MISE'). Initially, this was the Departmental Decree of 22 March 2011, (6) which was valid at the time the permits were applied for until 4 September 2015. From that time onwards and up until the date when the decrees finding the projects environmentally compatible were issued Departmental Decree of 15 July 2015 (7) was applicable. This remained in force until 3April 2017. They provided for a single procedure for the issuance of a permit for E&P activities that also required an environmental assessment which had to be applied for separately. In that single procedure

the State and regional authorities concerned participated and the opinions of the authorities, (8) the outcome of the environmental assessment procedure and, for the mainland, the agreement of the region had to be obtained.

13. Article 9(1) of Departmental Decree of 22 March 2011 and Article 14(1) of Departmental Decree of 15 July 2015 both provided that more than one exploration permit or individual licence may be granted to the same legal entity, provided that the total area does not exceed 10 000 km^2.

III. The facts in the main proceedings

14. On 27 August 2013, Global Petroleum Ltd, an Australian company operating worldwide in the offshore hydrocarbons sector, submitted four separate applications to the MISE. It applied for four exploration permits in adjacent areas located off the coast of the Puglia region, each with an area of just under 750 km^2 and thus a total area of approximately 3 000 km^2.

15. In line with the applicable Italian procedural rules, applications for an environmental impact assessment had to be submitted separately. This was done by Global Petroleum on 30 May 2014 when it applied to the MATTM for necessary decisions on environmental compatibility relating to two-dimensional and possibly three-dimensional seismic surveys to be carried out using the 'air gun' technique in the areas concerned.

16. By virtue of four separate decrees, issued on three dates, 14 October 2016, 31 August 2017, and on 26 September 2017 respectively ('decrees at issue'), the MATTM, in agreement with the Ministro dei Beni e delle Attività culturali e del Turismo (Minister for Cultural Heritage and Activities and Tourism – 'the MIBAC'), found that the projects were environmentally compatible. The MATTM noted that Global Petroleum could not submit a single application, as Law No 9/1991 provided that the area of the hydrocarbon exploration permit must be such as to allow the rational development of the exploration programme and cannot, in any case, exceed the extension of 750 km^2**,** but it indicated that the technical committee for environmental impact assessments had requested more information from Global Petroleum in order to assess the cumulative effect of the projects.

17. Regione Puglia (Puglia Regional Authority) – an authority participating in the procedure – challenged each of these decrees by lodging four separate actions before the Tribunale Amministrativo Regionale del Lazio (Regional Administrative Court of Lazio, Italy). It argued that the decrees at issue infringed Article 6(2) of Law No 9/1991 because they applied the limit of 750 km^2 only to the individual permits, rather than to the operators. This meant that an operator could obtain authorisations for a total area exceeding that limit.

18. The Regional Administrative Court dismissed these proceedings. It held that the law was not designed to protect the environment, but rather to promote the rational exploitation of hydrocarbon resources and, thus, competition between operators in the sector. From this it drew the conclusion that individual operators were entitled to receive multiple permits, even for adjacent areas, provided that each application submitted was for an area of less than 750 km^2 and each authorisation was obtained following a separate procedure.

19. The Regione Puglia instituted appeal proceedings against all four judgments before the the referring court .

20. This court questions the conformity of the Italian national legislation with Directive 94/22. It expresses doubts regarding the correct interpretation of Article 4 of that directive. In its opinion, that provision should be interpreted as encouraging 'competition in the market', meaning, that a large number of operators should compete with each other in the market, rather than merely 'competition for the market' in which operators are selected by means of competitive mechanisms to operate in a particular market. This latter form was, however, chosen by the Italian implementation of that directive which does not prohibit – and thus allows – the issuance of multiple permits to one operator, provided that that operator has obtained them by way of separate administrative procedures.

21. In contrast to this, the referring court maintains that Article 4 of Directive 94/22 obliges Member States to define a single optimal extent of areas to be made available for E&P activities and the optimal duration of authorisations for such purposes to any one operator in order to guarantee 'competition in the market' by various operators rather than only a few or even just one. The referring court fears that otherwise, there might be a concentration of permits in the hands of one or only a few operators.

22. The referring court further explains, with reference to the wording of the Italian legislation, that it finds itself unable to interpret the Italian implementing legislation in conformity with what it considers to be the correct interpretation of EU law, namely as allowing only a single permit per applicant. As that court affirms, the Italian legislation had always set two distinct limits with regard to the granting of hydrocarbon exploration permits: the first related to the maximum surface to be covered by an individual permit. (9) The second limit related to the maximum surface that could be covered by permits held by a single person or legal entity. (10) Therefore, the abolition of that second limit can, in the referring court's opinion, only be interpreted as meaning that there is no limitation to the number of permits that an operator might obtain. (11) This, however is, in that court's view, contrary to the purpose of Directive 94/22. The referring court maintains that this is true even if one considered the maximal limit of 10 000 km^2 (12) contained in Article 9(1) of the Departmental Decree of 22 March 2011 and Article 14(1) of the Departmental Decree of 15 July 2015 because that limit is more than thirteen times higher than the 'optimal limit' for an area of E&P activities fixed at 750 km^2.

IV. The question referred for a preliminary ruling and the procedure before the Court

23. In the light of the above considerations, the referring court has decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

> 'Is [Directive 94/22] to be interpreted as precluding national legislation such as that described which on the one hand recommends, for the purpose of issuing a hydrocarbons exploration permit for an area of a specified extent, granted for a specific period of time – in the present case, an area of 750 square kilometres for six years – and on the other hand allows those limits to be exceeded by the issue of multiple exploration permits for adjacent areas to the same legal entity, provided that they are issued following separate administrative procedures?'

24. Written observations were lodged by the Regione Puglia, Global Petroleum Ltd, the Italian, the Polish and the Cypriot Governments as well as the Commission.

A. Analysis

1. Admissibility

25. In its written observations, Italy submits that the request for a preliminary ruling is inadmissible. The reasons it gives are, on the one hand, that the decrees at issue deal with the environmental impact assessment which relies on the application of environmental rules whereas the question deals with the correct application of Directive 94/22. It further states that the Regione Puglia has no direct and present interest in the matter because the applications for exploration permits in question relate to areas adjacent to the coast which are part of the territorial sea. This means that they are within the exclusive competence of the State. Italy further informs the Court that the exploration permits have not yet been issued, as their granting – like that of any other exploration permit – is currently suspended due to the coming into force of Decreto-Legge 14 Dicembre 2018 n. 135 (13) which requires the passing of a 'development plan' (14) prior to the granting of permits for E&P activities.

26. According to the settled case-law of the Court, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. If, therefore, the questions referred concern the interpretation or validity of a rule of EU law, the Court is, in principle, required to give a ruling, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main

action, it is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. (15)

27. So far as the present case is concerned, I consider that the request for a preliminary ruling must be declared admissible. First, according to the referring court the environmental impact assessments had to be applied for – although separately – in order to obtain the explorations permits that Global Petroleum sought. The environmental assessment procedure was thus part and parcel of the procedure for the grant of the permits. (16) Second, the question whether the fact that only the Italian State is competent with respect to E&P activities in the territorial sea means that the Regione Puglia is not competent to challenge the decrees at issue relates to the procedure in the Italian courts. It has no effect on the admissibility of a reference for a preliminary ruling. The same is true for the question whether and in what respect the coming into force of Decree-Law of 14 December 2018, No 135 might influence the procedure in the Italian courts. For as long as the procedure continues in the referring court, the questions cannot be considered to be hypothetical. Third, although the decrees at issue regard the environmental impact of the seismic surveys that Global Petroleum proposes to carry out using the 'air gun' technique, the decrees on the environmental compatibility specifically refer to the fact that, due to the provisions of Law No 9/1991 it had not been possible for Global Petroleum to apply for only one permit for those four neighbouring areas. Fourth, the Regione Puglia does indeed rely on Article 6(2) of Law No 9/1991 in its challenge of these four decrees. Given that this is the provision implementing Directive 94/22, it is apparent that the interpretation of provisions of that directive is necessary for the referring court in order to rule on the dispute in the main proceedings.

2. Answer to the question referred

28. When the referring court asks whether a Member State can 'circumvent' a geographical limitation on the extent of areas that it has enshrined in its law implementing Article 4(a) of Directive 94/22 by granting several authorisations to the same entity if they have applied for such authorisations separately, the question is whether Directive 94/22 requires Member States to limit the geographical extent of authorisations that they give to one entity. The referring court does not only ask with regard to the geographical limitation (Article 4(a) of Directive 94/22) but also with respect to the limitation of any authorisation in time (Article 4(b) and (c) of Directive 94/22). The limitation in time contained in Article 4(b) is more flexible than the geographic limitation in that it allows for a prolongation where the stipulated duration is insufficient to complete the activity in question and where the activity has been performed in accordance with the authorisation. (17) Also, that limitation is not an issue in the present case according to the order for reference. I will therefore focus on the geographical aspect, although I do not doubt that any solution found would also apply to the time aspect.

29. According to the third paragraph of Article 288 TFEU, directives are binding upon the Member States as to the result to be achieved but leave it to the national authorities to choose the form and methods in which this result is to be achieved. Therefore, the principal question here is, whether Directive 94/22 intended to oblige Member States to set a maximum limit for areas in which one and the same entity is entitled to carry out E&P activities in each Member State.

30. This will have to be ascertained by applying the methods of interpretation used according to the Court's established case-law. These are to consider, in addition to the wording of the relevant provision, its context and the objectives pursued by the rules of which it forms part. (18)

(a) Literal interpretation

31. As none of the provisions of Directive 94/22 give a clear answer to the question whether Member States must fix a maximum geographical area in which E&P activities might be exercised *by one operator*, it is appropriate to consider whether related provisions or the system of such provisions help to clarify this question.

32. Article 2(1) of Directive 94/22 states that the Member States retain the right to determine the areas within their territory to be made available for the exercise of E&P activities. This is the premiss against which Directive 94/22 carries out a non-exhaustive harmonisation of those activities. (19)

33. The provision that is actually dealing with the 'extent of …area[s]' – the relevant term here is 'area', and there is no reference in that sentence to authorisation(s) (20) – is Article 4(a) of Directive 94/22. It provides that where the geographical areas are not delimited on the basis of a prior geometric division of the territory, 'the extent of each area is determined in such a way that it does not exceed the area justified by the best possible exercise of the activities from the technical and economic points of view'. This provision does not require Member States to delimit a maximum *surface* in absolute figures applicable to all cases within the Member State. Neither does it deal with the question whether this limit means that such areas must also constitute the limit for any one operator carrying out the abovementioned activities. Consequently, it does not contain rules for neighbouring areas either.

34. What Article 4(a) of Directive 94/22 does require is that, if authorisations are granted under the procedure described in Article 3(2) of Directive 94/22 ('the licencing round system'), 'objective criteria shall be established to this end and shall be made available to the entities prior to the submission of applications'. This means two things. First, if a Member State starts a licencing round, the publicity of the criteria for setting that limit is of importance. (21) Second, that former provision implies that if authorisations are granted according to the other two systems, namely, the 'open-door system' according to Article 3(3) of that directive (22) and the system according to Article 3(4) of Directive 94/22 – to which I will come presently – they will also have to adhere to the requirement that the extent of each area must not exceed the area justified by the best possible exercise of the activities from the technical and economic points of view.

35. Article 3 of Directive 94/22 deals with procedural issues regarding the grant of authorisations. In its second paragraph it describes what I have already referred to as 'the licencing round system' whereby applicants are invited to apply for authorisations, either at the initiative of the competent authority or as a reaction to an application by an entity if the Member State concerned then wishes to make the respective territory available for E&P activities. Those invitations for applications have to be published in the *Official Journal of the European Union*. (23) Article 3(3) of the same directive provides for an 'open-door system' in specific cases, which, however, also requires publication in the Official Journal. Both procedures aim at granting access to the procedure to all parties interested in taking part therein.

36. Article 3(4) of Directive 94/22 contains an exemption from those procedures 'if and to the extent geological or production considerations justify the granting of the authorisation for an area to the holder of an authorisation for a contiguous area'. Poland argues that that provision merely allows Member States to grant authorisations without them having to give all interested parties the opportunity to participate. As this is the only exemption granted under that provision, Poland holds that the provision presupposes that authorisations for contiguous areas can in fact be granted to one and the same operator. The wording of Article 3(1) of Directive 94/22 seems to give some support to that reading as it states that in the cases of Article 3(2) and (3) of that directive, Member States shall take the necessary measures to ensure that authorisations are granted following a procedure in which all interested entities may submit applications in accordance either with paragraphs 2 or 3. The provision therefore acknowledges that the exceptional procedure provided for in Article 3(4) of Directive 94/22 does not require access by all interested entities to that procedure. In fact, Article 3 of Directive 94/22 only deals with procedural issues regarding the grant of authorisations.

37. The Regione Puglia, on the other hand, considers Article 3(4) of Directive 94/22 to contain not only an exemption from the procedural requirement but also from what it considers to be a general principle, namely that authorisations for contiguous areas may only be granted in the specific circumstances set out in that provision. It should be recalled that that provision only deals with the grant of authorisations for contiguous areas under specific circumstances. Neither does Article 3 of Directive 94/22 (or indeed any other provision) state that authorisations for contiguous areas may only be granted in the circumstances set out in Article 3(4) of that directive, nor does that provision deal with the geographic limits of those (aggregate) areas. Therefore, if one does assume that Article 4(a) of Directive 94/22 obliges a Member State to provide an absolute limit to the extent of areas granted to one operator, why should applications for contiguous areas not be granted if those contiguous areas do not reach that extent? (24) This has no basis in the wording of Directive 94/22. Neither does Article 3(4) of Directive 94/22 grant an exemption from the limit set out in Article 4(a) of Directive 94/22, if one were to interpret that latter provision as providing for an absolute limit.

38. There is, therefore, no indication in Directive 94/22 of a general principle that no authorisations should be granted for contiguous areas, as was argued by the Regione Puglia. This does not, however, answer the question whether Article 4(a) of Directive 94/22 limits the extent of areas that might be granted to a single operator.

39. Another relevant provision is Article 5 of Directive 94/22. It sets out the criteria for the granting of authorisations to operators. (25) Article 5(1) of Directive 94/22 contains a very limited set of criteria for the grant of an authorisation – and it provides that those criteria must be drawn up and published in the Official Journal before the period for submission of applications. Further paragraphs of Article 5 of Directive 94/22 aim to ensure that all conditions and requirements regarding exercise and termination of the activity – including information on changes – are made available to all interested parties. This also applies to the communication of the reasons for an unsuccessful application to the applicant, if the applicant so wishes. In addition, it obliges the Member States to apply those criteria, conditions and requirements in a non-discriminatory manner.

40. Article 6(2) of Directive 94/22 is interesting with regard to environmental aspects raised by the Regione Puglia and the Commission. It entitles Member States to impose conditions and requirements on the exercise of the E&P activities, to, amongst others, the extent justified by the protection of the environment.

41. Article 7 of Directive 94/22 bears a competitive message. It obliges Member States to abolish legal, regulatory and administrative provisions that reserve to a single entity the right to obtain authorisations in a specific geographical area within its territory before 1 January 1997.

42. While it is clear from Article 7 as well as the sixth recital of Directive 94/22 that it is the legislature's wish to increase competition in the sector, Article 7 thereof deals with the problem existing at the time that directive entered into force. This was that in many countries legal, regulatory and administrative provisions existed which reserved to a single entity the right to obtain authorisations for E&P activities in specific areas. These had to be abolished by 1 January 1997. (26) That provision does not, however, contain any stipulations beyond that period. As is also evident from the wording of the sixth recital, the measures to be taken under the directive are the non-discriminatory access to and pursuit of the activities covered by the directive under conditions which 'encourage greater competition in this sector and thereby to favour the best prospection, exploration and production of resources in Member States and … reinforce the integration of the internal energy market'.

43. One also has to keep in mind that Article 4(a) of Directive 94/22 only requires the determination of an area that 'does not exceed the area justified by the best possible exercise of the activities from the technical and economic points of view' *if* the geographical areas are not already delimited on the basis of a prior geometric division of the territory. (27) Therefore, if one wanted to ensure the same competitive conditions with regard to the extent of the areas for all prospective operators within one Member State, this would always be incomplete. (28)

44. Further, Article 4(a) of Directive 94/22 only obliges Member States to set out objective criteria for the determination of such an area. It does not oblige Member States to fix a specific geographical surface in absolute figures for all areas in their territory (this might, due to geographical or geological differences in different parts of a Member State's territory not be the most efficient way from a technical and economic perspective). To fix a maximum surface for such activities in absolute figures constitutes an objective criterion. (29) As this is not the only way in which a Member State might implement Article 4(a) of Directive 94/22, I do not consider this to be a clear indication, however, that a limit like the 750 km^2 limit must be considered an absolute limit required by the directive.

45. The clearest language in support of such an interpretation can probably be found in the ninth recital. It states that 'the extent of the *areas covered by an authorisation* and the duration of the authorisation must be limited with a view to preventing the reservation to a single entity of an exclusive right over an area which can be prospected, explored and brought into production more efficiently by several entities'. (30) As this relates clearly to the criteria to be found in Article 4(a) and (b) of Directive 94/22, that provision could, in the light of the ninth recital be read as meaning that those criteria are meant to restrict any operator/entity to no more than one authorisation at any time for E&P activities in any given Member State.

46. While a reading of Article 4(a) of Directive 94/22 as meaning that there must be an absolute limit to the area for which (an) authorisation(s) might be granted to a single entity could increase the number of competitors for E&P activities, it also has potentially negative impacts. As the Commission points out, it might limit competition for the licences because it will cut out – over time, depending on the duration of the authorisations – an ever-increasing number of entities from the process if they are already carrying out such activities in a Member State.

47. Although this purely textual analysis does not lead to a finding that operators are limited to one exploration permit, I shall now nevertheless consider the objectives pursued by Directive 94/22.

(b) Contextual and teleological interpretation

48. According to recital 6 of Directive 94/22, the directive has two interlinked goals. First, it wants to ensure non-discriminatory access to and pursuit of E&P activities and it thereby wants to encourage and favour the best prospection, exploration and production of resources located in the European Union. As is clear from recital 3 thereof, this is of great importance given that the European Union depended at the time Directive 94/22 entered into force and still depends largely on imports for its hydrocarbon supplies.

49. Directive 94/22 was enacted on the basis of the first and third sentences of Article 57(2) as well as Articles 66 and 100a of the EC Treaty. (31) Already from this, it is clear that the main focus of the directive is the establishment of the internal market. Its main objective is to ensure non-discriminatory access for all entities, regardless of their nationality or whether they are public or private, to E&P activities. (32) This is evident from its rules which – as shown above – focus on informing all parties which might be interested in the grant of an authorisation (33) and the setting of a limited number of relevant criteria for such a grant. (34) This second measure aims at restricting Member States' possibilities to customise the criteria to their (national) favourites. Those principles can be summed up under the heading 'transparency and non-discrimination'. (35)

50. According to the Regione Puglia, Directive 94/22 guarantees competition *in the market* which, in its view, is only possible if its provisions are interpreted in such a way as to prevent that an entity might obtain a dominant position or that the authorisations are concentrated in the hands of a few operators. The Regione Puglia maintains that it is the objective of Directive 94/22 to avert the creation of exclusive rights in geographical areas which would prevent 'genuine competition in the market'. It is of the opinion that if bigger areas are allocated for E&P services to one entity, this will lead to a distortion of the market. According to the Regione Puglia, the purpose of the limit imposed according to Article 4(a) of Directive 94/22 – the 750 km^2 limit – is to prevent this.

51. I do not agree with this reasoning. First, the rules set out in Directive 94/22 are part of the body of public procurement rules, not of the competition rules. Although both sets of rules have the purpose of facilitating competition within the EU, which in turn aims at the furthering of the creation of an internal market, they have different starting points. While public procurement law regulates the behaviour of public authorities or public undertakings or undertakings that operate on the basis of special or exclusive rights granted by a Member State, competition rules deal with economic activities of undertakings. (36) As such, the respective rules act at different levels. Whereas Articles 101 and 102 TFEU limit certain uncompetitive behaviour and the Merger Regulation (37) aims to prevent structural changes to the market due to concentrations which would significantly impede effective competition, public procurement rules intend to give equal access to the market to all interested entities by applying the principles of transparency and non-discrimination. Only the Merger Regulation prevents the *creation* of a dominant position and that only in case of a concentration.

52. That Directive 94/22 belongs to the second set of provisions is further reinforced by Article 12 of Directive 94/22, which links that directive immediately to Directive 93/38. (38) Under that directive – as well as the directives replacing it – 'the exploitation of a geographical area for the purpose of … exploring for or extracting, oil [or] gas' was a relevant activity for the purposes of the directive. (39) Under Article 3 of Directive 93/38 it was, however, possible to request a derogation from the application of the utilities directive if certain criteria were fulfilled, namely criteria relating to transparency and non-discrimination in the granting of authorisations. The Member States then had to ensure in those authorisations the non-discriminatory and competitive procurement of the entity having been granted such an authorisation as well as information of the

Commission relating to the award of contracts. Article 3(5) of Directive 93/38, as added to the provision by Article 12 of Directive 94/22, provided that the transparency and non-discrimination criteria shall be considered to be satisfied once a Member State has complied with the provisions of Directive 94/22. (40)

53. This shows that Directive 94/22 and its provisions are a link in the chain of measures taken to lead sectors that operated in closed markets towards acting on the basis of EU-wide competition and applying public procurement rules, something which had been prevented by exclusive rights granted by national authorities for the exploitation of given geographical areas. (41)

54. The limitations to be imposed according to Article 4 of Directive 94/22 must be seen in this context. While it is recognised that E&P activities that require a big investment will only be carried out in an area if this can be done on an exclusive basis, (42) each such exclusive right means that competition ends for the geographical area covered by and for the period of such authorisation. Consequently, the effective removal from competition must be as limited in area and time as is reasonably possible while still allowing holders of authorisations to (at least theoretically) (43) recoup investments. (44)

55. The Court has pointed out that the EU rules on public procurement were adopted in pursuance of the establishment of a single market, the purpose of which is to ensure freedom of movement and eliminate restrictions on competition and that in that context, it is the concern of EU law to ensure the widest possible participation by tenderers in a call for tenders. (45) In line with this, the Court has consistently resisted attempts at extending the reasons for the exclusion of 'contractors' in public procurement procedures, beyond those set out in the respective directives, except if they were aimed at ensuring 'observance of the principles of equal treatment of all tenderers and of transparency, which constitute the basis of the EU directives on public procurement procedures, provided that the principle of proportionality is observed'. (46) Although these findings were made with respect to the award of public works contracts, public supply contracts and public service contracts, that same objective of not unduly restricting access to contracts is equally present in the area of utilities. (47)

56. Therefore, the purpose of Directive 94/22 is not to limit the number of applicants for an authorisation, it is rather the exact opposite, namely to have as many – suitable – entities as possible compete for the authorisations. It does not serve competition to exclude some competitors from the market when that competition takes place, namely at the time when authorisations are being granted, merely because the authorisations they hold already reach the limit set according to Article 4(a) of Directive 94/22. While it is true that entities who are already holders of authorisations for E&P activities, particularly of authorisations for neighbouring areas, might be in a better position to fulfil the criteria set out in Article 5(1) of Directive 94/22 and win in a bid for further authorisations, it is not the ambit of public procurement law to prevent this. And, as I have set out above, neither do the provisions of competition law prevent the possible attainment of a dominant position if this dominant position is reached due to market performance and not by means of concentration.

57. Should the fact that a single entity holds various authorisations lead to its reaching a dominant position in the market for E&P services – which, as has already been pointed out, is a worldwide market – and should it abuse this position, then it would run afoul of competition law which is obviously applicable. It is, however, questionable from the outset if a market functions best if only operators that do not already carry out similar activities in the same country are entitled to be active.

3. Environmental considerations

58. Although the referring court has not raised this issue in its request for a preliminary ruling, the Regione Puglia as well as the Commission have questioned whether environmental considerations should be considered. While I am doubtful with regard to their relevance in this case, I would nevertheless like briefly to deal with the issues raised.

59. As the Commission points out, prospection by use of the 'air-gun technique' requires an environmental assessment prior to the issuance of an authorisation. (48) When deciding under Article 4(2) of Directive 2011/92 whether an environmental impact assessment has to be carried out the competent national authorities have to take

into account the cumulative effect of projects according to Annex III, No 1(b) of that directive in order to avoid a circumvention of the objective of the EU legislation by the splitting of projects which, taken together, are likely to have significant effects on the environment. (49) The Regione Puglia seems to argue in this connection that the fact that (several) authorisations are sought for by one and the same operator in different proceedings leads to a situation where the necessary environmental impact assessment(s) only consider the impact of each individual measure (covered by such proceedings) rather than the accumulated impact of all of them. (50) Further, Article 11 TFEU provides that environmental protection requirements must be integrated into the definition and implementation of the European Union's policies and activities, in particular with a view to promoting sustainable development. (51) This principle has been recognised by the Court in a number of policy areas. (52)

60. According to the referring court, Article 3(9) of the ministerial decree of the MISE of 7 December 2016 (53) provides for a single procedure in the course of which the environmental impact assessment is carried out. Several ministries are involved in that procedure. For that purpose, Global Petroleum had submitted four applications to the MATTM for environmental assessments of the use of the air gun technique in the areas for which it had applied for permits. The decrees confirming the environmental compatibility are the subject of the legal proceedings underlying this reference for a preliminary ruling. The reference further included the information that the decrees stated that it had not been possible in accordance with the applicable Italian law to request a single environmental impact assessment, but that, in order nevertheless to evaluate the cumulative impact, additional information on that aspect had been sought from Global Petroleum. Therefore, there is no indication that the Italian procedure does not ensure that the obligations under Directive 2011/92 are carried out correctly. Rather, environmental protection requirements have been integrated into the procedure for the grant of an authorisation for E&P activities as envisaged by Article 11 TFEU.

61. Furthermore, Article 6(2) of Directive 94/22 provides that Member States may, to the extent justified by protection of the environment and of biological resources, impose conditions and requirements on the exercise of E&P activities. However, the referring court has not provided any information that Italy has imposed such conditions or requirements.

62. Apart from that, and most importantly, it is not clear in what way it can make a difference to the environmental impact assessment if or if not one single operator receives several authorisations which allow that operator to carry out E&P activities in an area exceeding 750 km^2.

63. For that reason, I am of the opinion that environmental considerations, including Directive 2011/92, do not play any role in the interpretation of Article 4(a) of Directive 94/22.

V. Conclusion

64. In light of the foregoing, I propose that the answer to be given to the Consiglio di Stato (Council of State, Italy) should be the following:

> Article 4 of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons must be interpreted as not precluding national legislation from allowing the issuance of multiple exploration permits (including for adjacent areas) to the same entity following separate administrative procedures, even if this leads to an entity obtaining exploration permits for more than the geographic area (and for a time longer than that) fixed according to that provision.

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1 Original language: English.

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2 OJ 1994 L 164, p. 3.

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3 E&P is an established abbreviation for ‘exploration and production’ (of hydrocarbons). I am using it here in the sense of including the step of prospecting, the geological analysis prior to a further exploration, as all three steps are specifically dealt with in Directive 94/22.

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4 GURI no 293 of 14 December 1996.

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5 GURI no 13 of 16 January 1991.

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6 Decreto 22 marzo 2011, Procedure operative di attuazione del decreto ministeriale 4 marzo 2011 e modalità di svolgimento delle attività di prospezione, ricerca e coltivazione di idrocarburi liquidi e gassosi e dei relativi controlli ai sensi dell’articolo 15, comma 5 del Decreto Ministeriale 4 marzo 2011 (Director’s Decree of 22 March 2011, Operating procedures for implementing the Ministerial Decree of 4 March 2011 and procedures for the prospection, exploration and production of liquid and gaseous hydrocarbons and related checks pursuant to Article 15(5) of the Ministerial Decree of 4 March 2011), GURI no 89 of 18 April 2011.

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7 Decreto 15 luglio 2015, Procedure operative di attuazione del Decreto 25 marzo 2015 e modalità di svolgimento delle attività di prospezione, ricerca e coltivazione di idrocarburi liquidi e gassosi e dei relativi controlli, ai sensi dell'art. 19, comma 6, dello stesso decreto (Decree of 15 July 2015, Operating procedures for implementing the Ministerial Decree of 25 March 2015 and procedures for the prospection, exploration and production of liquid and gaseous hydrocarbons and related controls, in the sense of Article 19(6) of that decree), GURI no 204 of 3 September 2015.

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8 For offshore activities, this included the Ministero dell’Ambiente e della Tutela del Territorio e del Mare (Ministry for the Environment and Protection of Land and Sea, ‘the MATTM’), the Ministry of Infrastructure and Transport and the Ministry of Agricultural, Food and Forestry Policies.

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9 The limit was initially set at 50 000 hectares (100 hectares equal 1 km^2) according to the provisions of the Legge 11 gennaio 1957, n. 6 (Law No 6 of 11 January 1957, ‘Law No 6/1957’), then elevated to 70 000 hectares according to the transitional provisions of Legge 21 luglio 1967, n. 613 (Law No 613 of 21 July 1967, ‘Law No 613/1967’), and finally to 100 000 hectares under the provisions of that same law. That figure was maintained in the original wording of Article 6 of Law No 9/1991 (prior to its change under the Legislative Decree No 625/1996).

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10 That second figure was 300 000 hectares throughout the national territory and 150 000 hectares in the same region according to the provisions of Law No 6/1957 (with a ban on granting permits for adjacent areas), elevated to 500 000 hectares under the transitional provisions of Law No 613/1967. The figure was raised to 1 000 000 hectares under that same law as well as Law No 9/1991 (prior to its change under the Legislative Decree No 625/1996) with an exception being granted in the case of the Ente nazionale idrocarburi (the National Hydrocarbons Authority, which is now Eni SpA).

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11 The referring court submits that that same view has been taken in a judgment of the Consiglio di Stato (Council of State), section VI of 4 January 2019, no 92. The referring court is, however, not in agreement with that section’s finding that a prohibition to issue several permits to one operator (leading to the exceeding of the limit in area prescribed in the hand of one operator) could not be inferred from EU legislation, namely Directive 94/22.

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12 Which is the same, namely 1 000 000 hectares, as that contained in Law No 9/1991 prior to its change under the Legislative Decree No 625/1996.

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13 Decreto-legge 14 dicembre 2018, n 135, recante disposizioni urgenti in materia di sostegno e semplificazione per le imprese e per la pubblica amministrazione (Decree-Law of 14 December 2018, No 135, on Urgent provisions on support and simplification for businesses and public administration, GURI no 290 of 14 December 2018), subsequently converted into the Law No 12 of 11 February 2019, GURI no 36 of 12 February 2019.

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14 Piano per la Transizione Energetica Sostenible delle Aree Idonee (Plan for the sustainable energy transition of eligible areas).

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15 See, to that effect, judgment of 22 April 2021, *PROFI CREDIT Slovakia* (C−485/19, EU:C:2021:313, paragraph 38 and the case-law cited).

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16 Whether such a decision that might be considered intermediary for the grant of the exploration permit may be attacked or whether only the final grant of such a permit can be attacked is entirely a matter for the national law.

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17 Article 4(c) of Directive 94/22 does state clearly, though, that it must be ensured that entities do not retain exclusive rights in the geographical area for longer than is necessary for the proper performance of the authorised activities.

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18 See to that effect, for example, judgment of 29 April 2021, *Natumi* (C−815/19, EU:C:2021:336, paragraph 35 and the case-law cited).

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19 See also to that effect Opinion of Advocate General Campos Sánchez-Bordona in *Joined Cases Eni and Shell Italia E & P* (C−364/18 and C−365/18, EU:C:2019:503, points 38 and 39).

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20 This is different from Article 4(b) of Directive 94/22 that refers to ‘the duration of an authorisation’. On the other hand, this does not mean that there cannot be several authorisations for one entity.

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21 Those criteria can therefore also be challenged.

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22 An ‘open-door system’ describes a system where areas for E&P activities are available on a permanent basis and may be the subject of a request for the grant of an authorisation at any time upon individual negotiation of authorisations.

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23 At the time Directive 94/22 came into force, the *Official Journal of the European Communities*.

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24 The Regione Puglia does agree that an entity should be entitled to obtain several exploration permits, provided the area covered by all permits stays within the limit of 750 km^2.

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25 In fact, only the fourth subparagraph of Article 5(1) of Directive 94/22 refers to 'operators'. Generally, the directive speaks about 'entities'. The term 'entity' is defined in Article 1(2) of Directive 94/22 as 'any natural or legal person or any group of such persons which applies for, is likely to apply for or holds an authorisation'. The expression 'operator of an entity', 'Betreiber eines Unternehmens' (in German), 'l'exploitant de l'entité' (in French), 'agente de una entidad' (in Spanish) contained in the fourth subparagraph of Article 5(1) seems somewhat unusual. Read in conjunction with the third subparagraph of that provision which speaks of the 'composition of an entity to which they may grant an authorisation', that expression seems to indicate that such an entity might comprise groups of companies which carry out their activities, for example, as a consortium (see also the third subparagraph of Article 3(2) of Directive 94/22). The differentiation between 'entity' and 'operator' does not make any difference for present purposes and an entity that is allocated an authorisation will require an operator or have to act as an operator carrying out the actual E&P activities.

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26 This does not concern provisions concerning or contained in individual authorisations and the provisions of Article 3(5) of Directive 94/22.

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27 It has also been pointed out by Wangelow, V. P., 'Petroleum licensing in the European Union: the allocation of E&P rights in Denmark', *The Journal of World Energy Law & Business*, vol. 11(2), OUP, Oxford, 2018, pp. 145-163, at page 155 that Directive 94/22 suffered from the fact that most of the geographical areas had already been allocated prior to its enactment (see a list of legal provisions in the Member States granting such authorisations at the time in Annex IV to Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, OJ 1993 L 199, p. 84).

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28 In addition to this, that would only relate to the specific Member States whereas the market – without going into any detail and as the matter has not been discussed or detailed, I would assume the product market to be the market for the exploration for crude oil and the exploration for natural gas (the Commission has regarded these markets together as the contents of underground reservoirs cannot be known at the stage of exploration) – for these activities is not necessarily that of the individual Member States. In fact, the Commission has stated in various decisions that the market for E&P services must be considered to be a worldwide market. See, for example, Commission Implementing Decision of 24 June 2011 exempting exploration for oil and gas and exploitation of oil in Italy from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2011 L 166, p. 28, paragraphs 9 and 14), and, with respect to the activity of exploration, Commission Implementing Decision (EU) 2015/1120 of 8 July 2015 exempting exploration for oil and gas in Greece from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2015 L 182, p. 88, paragraph 12) and Commission decision of 7 March 2019 in Case M.9175 – Total / Chevron Denmark, OJ 2019, C 126, p. 1, paragraph 19, also with respect to the product market definition referred to above.

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29 Global Petroleum claims that the search for hydrocarbons at sea is generally very expensive, involving significant upfront costs of sometimes tens of millions of euros, depending on the depth of the water as well as financial guarantees of between 200 million and 500 million euros to cover guarantees for damage that might occur during exploration (under Italian law). According to that party and Italy, entities would not be interested in undertaking E&P activities if they were limited to one area of 750 km^2. This, however, might only serve as an argument that Italy set the limit at 750 km^2 too low. Italy is, however, not prevented by Article 4(a) of Directive 94/22 from setting a limit that might be sub-optimally low because the provision only obliges the Member States to take measures to ensure that the geographical area for E&P activities '*does not exceed* the area justified by the best possible exercise of the activities from the technical and economic points of view' (emphasis added).

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30 Emphasis added.

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31 Now Articles 53(1), 62 and 114 TFEU.

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32 See also, to that effect, Report of 29 July 1998 from the Commission to the Council on Directive 94/22/EC on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons, COM(1998) 447 final ('Report on Directive 94/22').

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33 In particular according to Article 3(2) and (3) of Directive 94/22.

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34 Article 5(1) of Directive 94/22.

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35 These principles are general principles of public procurement law which also find expression in the utilities directives. The second principle was already specifically set out in Article 4(2) of Directive 93/38. Later utilities directives have contained an article setting out those principles of awarding contracts. See, for example, Article 10 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1) and Article 36(1) of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243).

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36 This does not mean that a public authority might not be treated as an undertaking for competition law purposes if it carries out economic activities.

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37 Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

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38 That link operates via Article 45(4) of that directive which states that references to Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1990 L 297, p. 1), the directive that Article 12 of Directive 94/22 amended, shall be construed as referring to Directive 94/22. Given that Directive 93/38 had to be implemented by 1 July 1994 according to its Article 45(1) whereas Directive 94/22 (only) had to be implemented by 1 July 1995 according to its Article 14(1) the initial reference to Directive 90/531 was of little practical relevance.

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39 Article 2(2)(b) of Directive 93/38, Article 7(a) of Directive 2004/17 and Article 14(a) of Directive 2014/25.

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40 This solution has in fact been carried over into Directive 2004/17 by Article 30(3) thereof in conjunction with Annex XI G. As it had been found that Directive 94/22 had been correctly implemented and was operating correctly, Directive 2004/17 abolished the specific regime that had been created with regard to E&P activities and replaced it with a general procedure allowing for the exemption of sectors whose activity is directly exposed to competition on markets to which access is not restricted (recital 38 and Article 30 of Directive 2004/17). Under the currently applicable Directive 2014/25, 'procurement made for the purpose of exploring for oil and gas' was completely excluded from the directive. The reason for this is that 'that sector had consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the Union

procurement rules is no longer needed' (recital 25 of Directive 2014/25) whereas the extraction of oil and gas continues to be covered by it. Access to that market will, however, be deemed not to be restricted if a Member State has implemented and applied Directive 94/22 (see, recital 25 and Article 34(3) in conjunction with Annex III G thereof).

41 See recital 11 of Directive 93/38 and recital 1 of Directive 2014/25.

42 Article 1(3) of Directive 94/22 defines an authorisation as an entitlement to exercise an exclusive right.

43 Given that the activities of prospecting and exploration are meant to ascertain whether and where there might be exploitable hydrocarbon resources, there is obviously always the possibility that no hydrocarbons, or at least none the exploitation of which is economically viable, are found.

44 The same idea underlies the limitation in time of concessions according to Article 18 of Directive 2014/23/EU of the European Parliament and of the council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1). See also recital 52 of that directive.

45 See to that effect, judgments of 19 May 2009, *Assitur* (C−538/07, EU:C:2009:317, paragraphs 25 and 26) and of 8 February 2018, *Lloyd's of London* (C−144/17, EU:C:2018:78, paragraphs 33 and 34 and the case-law cited).

46 Judgments of 16 December 2008, *Michaniki* (C−213/07, EU:C:2008:731, paragraphs 43 and 44) with respect to the first paragraph of Article 24 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), and of 8 February 2018, *Lloyd's of London* (C−144/17, EU:C:2018:78, paragraphs 29, 30 as well as 36 and the case-law cited) with regard to the grounds of exclusion from participation in a tender due to the personal situation of the candidate or tenderer set out in Article 45 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

47 See recitals 71, 73 and the third paragraph of recital 106 of Directive 2014/25.

48 This has been implemented under Italian law as envisaged by Article 4(2) in conjunction with No 2(e) of Annex II of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) (OJ 2012 L 26, p. 1).

49 See to that effect, judgments of 25 July 2008, *Ecologistas en Acción-CODA* (C−142/07, EU:C:2008:445, paragraph 44 and the case-law cited); of 10 December 2009, *Umweltanwalt von Kärnten* (C−205/08, EU:C:2009:767, paragraph 53); of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C−275/09, EU:C:2011:154, paragraph 36); of 15 December 2011, *Commission* v *Spain* (C−560/08, not published, EU:C:2011:835, paragraph 80); of 21 March 2013, *Salzburger Flughafen* (C−244/12, EU:C:2013:203, paragraph 37); of 11 February 2015, *Marktgemeinde Straßwalchen and Others* (C−531/13, EU:C:2015:79, paragraphs 43 and 45) with regard to Directive 85/337, which was the predecessor of Directive 2011/92; as well as judgment of 14 January 2016, *Commission* v *Bulgaria* (C−141/14, EU:C:2016:8, paragraph 95).

50 The Regione Puglia refers to Article 6(2) of Directive 94/22, Article 3(3) TEU and Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ 2008 L 164, p. 19) without, however, clearly stating in which way the interpretation of Article 4(a) of Directive 94/22 as not setting an overall limit for geographical areas for which authorisations may be granted to an operator infringes those provisions.

51 See also Article 37 of the Charter of Fundamental Rights of the European Union.

52 For example in the area of public procurement.

53 Decreto 7 dicembre 2016 Disciplinare tipo per il rilascio e l'esercizio dei titoli minerari per la prospezione, ricerca e coltivazione di idrocarburi liquidi e gassosi in terraferma, nel mare territoriale e nella piattaforma continentale (Decree of 7 december 2016, Standard procedure for the issuance and exercise of mining licences for the prospecting, research and cultivation of liquid and gaseous hydrocarbons on the mainland, in the territorial sea and on the continental shelf, GURI no 78 of 3 April 2017.