Provisional text

JUDGMENT OF THE COURT (Second Chamber)

13 January 2022 (*)

(Reference for a preliminary ruling – Energy – Directive 94/22/EC – Conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons – Authorisation for the prospection of hydrocarbons in a specific geographical area for a specified period – Contiguous areas – Grant of several authorisations to the same operator – Directive 2011/92/EU – Article 4(2) and (3) – Environmental impact assessment)

In Case C 110/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 23 January 2020, received at the Court on 27 February 2020, in the proceedings

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,

intervener:

Global Petroleum Ltd,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the First Chamber, acting as President of the Second Chamber, I. Ziemele, T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Regione Puglia, by F. Amato and A. Bucci, avvocati,

– Global Petroleum Ltd, by E. Turco, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and G. Aiello, avvocato dello Stato,

– the Cypriot Government, by D. Kalli and N. Ioannou, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by G. Gattinara, M. Noll-Ehlers and B. De Meester, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 June 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 (OJ 1994 L 164, p. 3).

2 The request has been made in the context of proceedings between the Regione Puglia (Region of Puglia, Italy), on the one hand, and the ministero dell'Ambiente e della Tutela del Territorio e del Mare (Ministry of the Environment and Protection of Land and Sea, Italy; 'the Ministry of the Environment'), the ministero dei Beni e delle Attività culturali e del Turismo (Ministry of Culture, Cultural Activities and Tourism, Italy), the ministero dello Sviluppo economico (Ministry of Economic Development, Italy), the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers, Italy) and the Commissione tecnica di verifica dell'impatto ambientale (Technical Committee for environmental impact assessments, Italy), on the other, concerning applications submitted by Global Petroleum Ltd for exploration permits relating to contiguous areas off the coast of the Puglia region.

Legal context

European Union law

Directive 94/22

3 The fourth, sixth, seventh and ninth recitals of Directive 94/22 state:

'Whereas Member States have sovereignty and sovereign rights over hydrocarbon resources on their territories;

…

Whereas 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;

Whereas, 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; whereas authorisations must be granted on the basis of objective, published criteria; whereas the conditions under which authorisations are granted must likewise be known in advance by all entities taking part in the procedure;

…

Whereas 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'.

4 Article 1 of Directive 94/22 provides:

'For the purposes of this Directive:

…

3. "*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;

…'

5 Under Article 2 of that directive:

'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.

…'

6 Article 3 of that directive provides:

'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.

…’

7 Article 4 of the directive is worded as follows:

‘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 authorised activities.’

Directive 2011/92/EU

8 Article 4 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 (OJ 2012 L 26, p. 1; ‘the EIA Directive’), provides:

‘1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

…

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

…’

Italian law

9 Article 6 of legge n. 9, Norme per l’attuazione del nuovo Piano energetico nazionale: aspetti istituzionali, centrali idroelettriche ed elettrodotti, idrocarburi e geotermia, autoproduzione e disposizioni fiscali (Law No 9 for the implementation of the new national energy plan: institutional aspects, hydroelectric plants and power line networks, hydrocarbons and geothermal energy, self-production and fiscal provisions) of 9 January 1991, in the version applicable to the dispute in the main proceedings (Ordinary Supplement to GURI No 13 of 16 January 1991; ‘Law No 9/1991’), provides:

‘1. The exploration permit shall be granted by decree of the Ministro dell’industria, del commercio e dell’artigianato (Minister for Industry, Trade and Crafts), after consulting the Technical Committee for Hydrocarbons and Geothermal Energy …, in agreement with the Ministro dell’ambiente (Minister for the Environment) and the Ministro della marina mercantile (Minister for the Merchant Navy), according to their respective spheres of competence, with regard to the requirements relating to the activity to be pursued in the maritime domain, in territorial waters and on the continental shelf.

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 km²; 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 or she 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 or she has fulfilled the obligations under the permit.

6. The permit holder may be granted a further extension if, on expiry of the permit, drilling or production test works are still in progress for reasons not attributable to his or her inactivity, negligence or incompetence. The extension shall be granted for the time necessary to conclude the works and, in any event, for a period no longer than one year. The detailed technical and financial programme for the new period of works shall be approved with the extension decree.’

10 The Departmental Decree of the Ministry of Economic Development of 15 July 2015 establishing procedures for the application of the Ministerial Decree of 25 March 2015, detailed rules for the prospection, exploration and production of liquid and gaseous hydrocarbons and related checks pursuant to Article 19(6) of that ministerial decree (GURI No 204 of 3 September 2015) governs the procedure for the publication of applications for exploration permits and the procedure for selecting operators. Article 9(4) of that departmental decree provides, inter alia, that within 90 days of the communication by the Ministry of the reasoned result of the invitation to tender to each of the applicants or, in cases where no competing application has been made, within 90 days of the end of the competitive tendering period, the applicant is to submit to the competent authority a request for an environmental impact assessment.

11 Article 14(1) of that decree provides that, during the exploration phase, more than one exploration permit or individual licence may be granted to the same legal entity, either directly or to parent companies, subsidiaries or entities within the same corporate group, provided that the total area does not exceed 10 000 km².

The dispute in the main proceedings and the question referred for a preliminary ruling

12 On 27 August 2013, Global Petroleum, an Australian company operating in the offshore hydrocarbons sector, submitted four applications to the Ministry of Economic Development seeking as many exploration permits in contiguous areas situated off the coast of the Puglia region, for areas of slightly less than 750 km² each.

13 Since Global Petroleum was required to obtain decisions finding the environmental compatibility of seismic survey projects which it intended to carry out using the ‘air gun’ technique in the areas concerned, it submitted, on 30 May 2014, four applications to the Ministry of the Environment seeking an environmental impact assessment of those projects.

14 By four decrees (together, ‘the contested decrees’), the Ministry of the Environment and the Ministry of Culture, Cultural Activities and Tourism declared the projects in question compatible with the environment.

15 The Region of Puglia brought an action for annulment against each of the contested decrees before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), claiming that those decrees infringe Article 6(2) of Law No 9/1991, which provides that the area covered by the exploration permit may not exceed 750 km². It is of the view that that area limit applies not to each individual permit, but to the operator, so that one operator cannot be granted several permits that together cover a total surface area greater than that limit.

16 By four judgments of 26 November 2018 and 14 January 2019, that court dismissed the actions brought by the Region of Puglia. It took the view that Global Petroleum could obtain a number of exploration permits, including for contiguous areas, provided that each permit application relates to an area of less than 750 km² and that each permit is issued at the end of a separate procedure.

17 The Region of Puglia brought an appeal against those judgments before the Consiglio di Stato (Council of State, Italy) – the referring court – relying, in essence, on the same arguments as it had put forward at first instance.

18 The referring court seeks guidance, in particular, as to the interpretation of Article 3(2) and Article 4 of Directive 94/22, in so far as that directive is intended to promote not merely competition ‘for the market’, consisting in selecting operators by means of competitive mechanisms, but competition ‘in the market’, based on the participation of the largest number of competing operators. In its view, Article 4 must be interpreted as requiring the Member States to set a single optimal dimension, in both space and time, for the purposes of granting the authorisations referred to in that article, so as to prevent those authorisations from being granted to a small number of operators, or even to a single operator.

19 According to the referring court, the abolition, by Law No 9/1991, of the 1 000 000 ha limit on the maximum total area covered by permits that can be issued to a single operator is contrary to the objective of promoting competition pursued by Directive 94/22. It considers that the fact that the Departmental Decrees of 22 March 2011 and 15 March 2015 maintained the 10 000 km² per operator upper limit is irrelevant to that assessment.

20 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following question to the Court 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, an area of a specified extent, granted for a specific period of time – in the present case, an area of 750 [km²] 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?’

Consideration of the question referred

Admissibility

21 In its written observations, the Italian Government contends that the question referred is inadmissible.

22 It submits, first, that the dispute brought before the referring court relates to the legality of acts concerning the assessment of the impact of the projects at issue in the main proceedings on the environment, which relies on the application of environmental rules, whereas the question concerns the application of Directive 94/22. Second, the Italian Government is of the view that the Region of Puglia does not have a direct and

current interest in bringing proceedings, since the permit applications at issue in the main proceedings concern areas adjacent to the coast which are part of the territorial sea and therefore come within the exclusive competency of the State. Third, the Italian Government submits that those permits have not yet been granted, since their grant, like that of any other exploration permit, is suspended pending prior approval of a general planning instrument for mining activities in the national territory.

23 It should be borne in mind that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a 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. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C 709/20, EU:C:2021:602, paragraph 54 and the case-law cited).

24 The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem 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 (judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C 709/20, EU:C:2021:602, paragraph 55 and the case-law cited).

25 In the present case, the fact that the request for a preliminary ruling concerns the interpretation of Directive 94/22, while the dispute in the main proceedings concerns actions brought against the contested decrees, which were adopted on the basis of the national legislation transposing Article 4(2) of the EIA Directive, is not such as to render that question inadmissible.

26 Indeed, the referring court has stated specifically that those decrees arose in the context of the procedure relating to applications for hydrocarbon exploration permits, which is governed by national provisions transposing Directive 94/22. In particular, in Italian law, the environmental assessment procedure carried out on the basis of the national legislation transposing the EIA Directive forms an integral part of the procedure for granting such permits. Therefore, those two procedures are not mutually exclusive but, rather, are complementary.

27 The referring court has also stated that the resolution of the dispute pending before it depends on the Court's answer to the question referred. The referring court points out that, if the Court were to answer the question referred to the effect that Directive 94/22 precludes national legislation such as that at issue in the main proceedings, the projects that are the subject of the applications for exploration permits which cover an overall area exceeding 750 km^2 could not be authorised and the contested decrees adopted in the context of the environmental impact assessment procedure would have to be annulled.

28 As regards the argument put forward by the Italian Government that since the exploration and production activities in territorial seas fall within the exclusive competence of the Italian State the Region of Puglia has not established an interest in challenging the legality of the contested decrees, it should be noted that that argument concerns the matter of the interest in bringing proceedings before the Italian courts, which is irrelevant for the purposes of assessing the admissibility of the question referred for a preliminary ruling (see, to that effect, judgment of 15 October 2009, *Acoset*, C 196/08, EU:C:2009:628, paragraphs 33 and 34).

29 Similarly, the possible effects of the alleged suspension of all pending procedures for the grant of new exploration permits on the procedure in the main proceedings must be assessed by the national court. In addition, it must be held, as the Advocate General stated in point 27 of his Opinion, that, since the procedure in the main proceedings is ongoing, the question referred for a preliminary ruling is not hypothetical.

30 The question is therefore admissible.

Substance

31 By its question, the referring court asks, in essence, whether Directive 94/22 must be interpreted as precluding national legislation which lays down an upper limit on the size of the area that may be covered by a hydrocarbon exploration permit, but does not prohibit granting the same operator more than one permit for adjacent areas that together cover an area exceeding that limit.

32 The referring court asks, in particular, whether it is for the Member States to define optimally the size of the areas subject to exploration permits and the duration of those permits, in order to prevent the concentration of permits in the hands of a few operators, or even a single operator.

33 The Region of Puglia points out, in that regard, that four exploration permit applications relating to adjacent areas were lodged almost simultaneously by the same company, namely Global Petroleum. The region claims that the possibility for a single operator to submit such applications enables a permit which actually corresponds to one and the same exploration project to be divided up. In its view, such a situation leads to a circumvention of EU legislation and to harmful consequences, not only as regards competition but also as regards the environment, on account of the exploration techniques used.

34 It should be noted at the outset that Directive 94/22 aims in particular, as stated in its seventh recital, to set up common rules to ensure that the procedures for granting authorisations for the prospection, exploration and production of hydrocarbons are open to all entities possessing the necessary capabilities and that authorisations are granted on the basis of objective, published criteria. As the Advocate General observed in points 51 and 52 of his Opinion, the rules set out in Directive 94/22 are part of the body of public procurement rules.

35 As regards, in the first place, the extent of the geographical areas covered by hydrocarbon exploration permits granted on the basis of Directive 94/22, the fourth recital of that directive states that ‘Member States have sovereignty and sovereign rights over hydrocarbon resources on their territories’. Thus, according to Article 2(1) of that directive, ‘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’.

36 In that context, Article 4(a) of that directive requires, as the Advocate General observed in point 43 of his Opinion, 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 delimited on the basis of a prior geometric division of the territory.

37 Article 4(c) of Directive 94/22 provides, in addition, that entities do not retain exclusive rights in the geographical area for which they have received a permit for longer than is necessary for the proper performance of the authorised activities. In particular, as is stated in the ninth recital of that directive, 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.

38 It follows from the foregoing that Directive 94/22 does not preclude national legislation which delimits the geographical area and the period for which a permit may be granted, but those restrictions must nevertheless be such as to ensure the best possible exercise of activities from both a technical and economic point of view.

39 In the second place, as regards the number of authorisations that may be applied for or held by an entity, it must be recalled that, in accordance with Article 1 of Directive 94/22, each authorisation confers an exclusive right to prospect, explore for or produce hydrocarbons in a geographical area for a limited period.

40 Furthermore, it is apparent from the sixth recital of Directive 94/22 that Member States must ensure non-discriminatory access to and pursuit of activities relating to the prospection, exploration and production of hydrocarbons, in order to encourage greater competition in that 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.

41 Similarly, Article 2(2) of that directive requires the Member States to ensure that there is no discrimination between interested economic entities regarding access to and pursuit of those activities (judgment of 7 November 2019, *Eni and Shell Italia E & P*, C 364/18 and C 365/18, EU:C:2019:938, paragraph 23 and the case-law cited).

42 It follows from Article 3(1) of Directive 94/22 that it is for the Member States to take the necessary measures to ensure that authorisations are granted following transparent procedures which allow all interested entities to make applications with a view to accessing and pursuing those activities under identical conditions.

43 It is by way of derogation from that principle that, with regard to contiguous areas, Article 3(4) of that directive exempts Member States from those procedures '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'. As the Advocate General observed in point 37 of his Opinion, it is apparent from this that several authorisations for contiguous areas may be granted to one and the same operator.

44 It should also be noted, as regards the question as to whether Directive 94/22 requires the pursuit of activities of prospecting, exploration and extraction of hydrocarbons to be limited to one area per operator, that that directive does not lay down any limitation as regards the number of authorisations and/or the number of entities to which permits may be issued.

45 It is nevertheless for the Member State to ensure that any application for an operating permit is subject to the procedures and requirements imposed by Article 3 of Directive 94/22, without prejudice to the derogation provided for in paragraph 4 of that article, and that, in that connection, the requirements of transparency and non-discrimination are observed, since those principles are of particular importance for attaining the objective, pursued by the public procurement rules, of giving equal access to the market to all interested entities, as the Advocate General noted in point 51 of his Opinion.

46 Accordingly, it is necessary to ensure that the delimitation of geographical areas and the rules relating to the procedures and conditions for granting authorisations for the prospection, exploration and production of hydrocarbons are such as to ensure transparent and 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 favour the best prospection, exploration and production of resources in Member States, and to reinforce the integration of the internal energy market.

47 In the present case, it should be noted that, where the Italian legislation provides that the area covered by a hydrocarbon exploration permit must allow the rational development of the exploration programme without exceeding a surface area of 750 km^2, that area must be regarded as capable of ensuring the best possible exercise of activities from the technical and economic points of view, as required by Article 4(a) of Directive 94/22.

48 However, if the legislation of that Member State allows the same operator to apply for several authorisations, without limiting their number, it is then necessary to ensure that the area covered by those authorisations, taken together, also guarantees the best possible exercise of activities from both a technical and economic point of view and is not liable, in view of the exclusive rights attached to such authorisations, to jeopardise the achievement of the objectives pursued by Directive 94/22, referred to in paragraph 46 above.

49 It is also important to add, as has been pointed out in paragraph 27 above, that the contested decrees were adopted in the context of the environmental impact assessment procedure for the projects which are the subject of applications for exploration permits. In that regard, it is apparent from the documents before the Court that the delimitation of geographical areas open to prospecting, exploring and bringing into production, provided for in Article 6(2) of Law No 9/1991, concerns both the procedure for granting an exploration permit and the procedure for assessing the environmental impacts of exploration projects, and that the administrative procedure at issue in the main proceedings is intended, inter alia, to protect interests relating to protection of the environment.

50 On that point, the referring court stated that the technique used by Global Petroleum to explore for hydrocarbons, which consists in using a high-pressure compressed air generator known as an 'air gun' to generate seismic waves that hit the seabed, could be harmful to marine life and that, for that reason, those projects had to be subject to an environmental impact assessment under the EIA Directive.

51 Thus, although the question referred for a preliminary ruling concerns the interpretation of Directive 94/22, it is necessary, in order to give a full answer to the referring court, also to examine whether the power to grant to a single operator several licences for contiguous areas that together cover an area greater than that regarded by the national legislature as allowing the rational development of the exploration programme, complies with the requirements of the EIA Directive.

52 In that regard, it must be recalled that, in accordance with the Court's case-law relating to the EIA Directive, it may prove necessary to take into account the cumulative effects of projects such as those at issue in the main proceedings in order to avoid a circumvention of EU legislation by splitting up projects which, taken together, are likely to have significant effects on the environment (see, to that effect, judgments of 21 March 2013, *Salzburger Flughafen*, C 244/12, EU:C:2013:203, paragraph 37 and the case-law cited, and of 14 January 2016, *Commission* v *Bulgaria*, C 141/14, EU:C:2016:8, paragraph 95).

53 In the present case, as the European Commission has pointed out, it is for the competent national authorities to take account of all the environmental effects flowing from the temporal and spatial delimitations of the areas covered by hydrocarbon exploration permits.

54 Therefore, it must be held that, although the Italian legislation allows the same operator to apply for several hydrocarbon exploration permits, without limiting their number, it is necessary, in the context of the environmental impact assessment carried out in accordance with Article 4(2) and (3) of the EIA Directive, also to assess the cumulative impact of projects likely to have significant effects on the environment.

55 In the light of the foregoing, the answer to the question referred is that Directive 94/22 and Article 4(2) and (3) of the EIA Directive must be interpreted as not precluding national legislation which lays down an upper limit on the size of the area that may be covered by a hydrocarbon exploration permit, but does not expressly prohibit granting the same operator more than one permit for adjacent areas that together cover an area exceeding that limit, provided that doing so is such as to ensure the best possible exercise of the exploration activity concerned from both a technical and economic point of view, and the achievement of the objectives pursued by Directive 94/22. It is also necessary, in the context of the environmental impact assessment, to assess the cumulative effect of projects likely to have significant effects on the environment, which are presented by that operator in its applications for hydrocarbon exploration permits.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

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 and Article 4(2) and (3) 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 must be interpreted as not precluding national legislation which lays down an upper limit on the size of the area that may be covered by a hydrocarbon exploration permit, but does not expressly prohibit granting the same operator more than one permit for adjacent areas that together cover an area exceeding that limit, provided that doing so is such as to ensure the best possible exercise of the exploration activity concerned from both a technical and economic point of view, and the achievement of the objectives pursued by Directive 94/22. It is also necessary, in the context of the environmental impact assessment, to assess the cumulative effect of projects likely to have significant effects on the environment, which are presented by that operator in its applications for hydrocarbon exploration permits.

[Signatures]

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* Language of the case: Italian.