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Press and Information

Advocate General's Opinion in Case C-110/20
Regione Puglia

Advocate General Hogan: a Member State is not obliged to limit the extent of the areas in which one specific operator is entitled to carry out prospection, exploration and production of hydrocarbons, such as petroleum and natural gas

However, Member States must ensure non-discriminatory access to such activities for all operators, public or private, regardless of their nationality, and may impose conditions and requirements on the exercise of such activities in order to protect the environment

As of 2013, Global Petroleum, an Australian company operating in the offshore hydrocarbons sector, submitted four separate applications to the Italian authorities for **four hydrocarbon exploration permits in adjacent areas located in the Adriatic Sea, off the coast of the Puglia region**. **Each one of these applications concerns an area of just under 750 km²**. In fact, the Italian legislation provides that the area covered by a permit cannot exceed 750 km².

In 2016 and 2017, the Italian authorities found that the four exploration projects submitted by Global Petroleum were environmentally compatible, even taking into consideration their cumulative effect.

Regione Puglia (Puglia Regional Authority, Italy) brought actions before the Italian courts, seeking, ultimately, to prevent Global Petroleum from exploiting a total area in the seabed of approximately 3 000 km². It **argued that, in order to avoid "circumventing" the law, the limit of 750 km² should apply not only to each permit but also to each operator**.

In this context, the Consiglio di Stato (Council of State, Italy), national court of last instance, referred to the Court of Justice a preliminary ruling. The question essentially is whether Directive 94/22, on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons [1] (« E&P activities »), obliges a Member State to impose a maximum and absolute limit to the extent of the areas in which one specific operator is entitled to carry out such activities.

In today's Opinion, Advocate General Gerard Hogan suggests that the Court should answer this question in the negative. He takes the view that the **directive does not preclude national legislation from allowing the issuance of multiple permits (including for adjacent areas) to the same operator, even if they cover an overall area larger (and an overall time period longer) than the limits fixed by that legislation for one permit**.

The Advocate General points out that **Member States retain the right to determine which areas within their territory are available for the exercise of E&P activities**. The directive obliges Member States to fix an optimal area for such activities. It does not oblige Member States to fix a specific geographical surface in absolute figures (e.g. in square kilometers) or to deny authorisations for contiguous areas. Neither does it deal with the question whether there are limits to the extent of areas that might be granted to a single operator.

[1] 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).

The Advocate General highlights that the directive obliges **Member States to set out objective and public criteria** for the determination of such areas.

He also emphasizes that the directive, being part of the body of the EU public procurement rules, imposes **transparency and non-discrimination** for the access and pursuit of E&P activities in order to **encourage competition** and reinforce the integration of the internal energy market. Therefore, the purpose of the directive is **to have as many suitable operators as possible compete for the authorisations, be them public or private subjects, regardless of their nationality**, so favouring the **best possible exploitation of the resources of hydrocarbons located in the Union**.

In the Advocate General's view, the directive does not aim to prevent the creation of a dominant position: only the Merger Regulation[2] has this purpose and that, only in case of a concentration of two or more firms by merger or acquisition. Therefore, an **operator, who is already holder of an authorisation for E&P activities in a certain area, might be in a better position to win in a bid for further authorisations concerning neighbouring areas. The dominant position achieved would not entail any EU law infringement, since it would result from a market performance and not from a concentration**.

The Advocate General reminds that Article 11 of the Treaty on the Functioning of the European Union provides that environmental protection requirements must be integrated into Union's policies and activities, in particular with a view to promoting sustainable development. In this perspective, **when an environmental impact assessment has to be carried out, the national authorities have to take into account the cumulative effect of projects** in order to avoid a circumvention of the EU environmental legislation by the splitting of projects which, taken together, are likely to have significant effects on the environment.

Finally, the Advocate General observes that the directive provides that **Member States may impose conditions and requirements on the exercise of the E&P activities in order to protect the environment and the biological resources**.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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[2] 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).