Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

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on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 57 (2), first and third sentences, Articles 66 and 100a thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Acting in accordance with the procedure referred to in Article 189b of the Treaty[(3)],

Whereas the internal market comprises an area without internal frontiers in which the free movement of goods, services, persons and capital is ensured; whereas the necessary measures must be adopted for its operation;

Whereas in its resolution of 16 September 1986[(4)], the Council identified as an objective of the energy policy of the Community and the Member States the greater integration, free from barriers to trade, of the internal energy market with a view to improving security of supply, reducing costs and improving economic competitiveness;

Whereas the Community largely depends on imports for its hydrocarbon supply; whereas it is consequently advisable to encourage the best possible prospection, exploration and production of the resources located in the Community;

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

Whereas the Community is a signatory to the United Nations Convention on the Law of the Sea;

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 authorizations for the prospection, exploration and production of hydrocarbons must be open to all entities possessing the necessary capabilities; whereas authorizations must

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

Whereas 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; whereas these options must be used in a non-discriminatory way; whereas, 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; whereas the activities of entities must be monitored only to the extent necessary to ensure their compliance with these obligations and conditions;

Whereas the extent of the areas covered by an authorization and the duration of the authorization 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;

Whereas Member States' entities should enjoy in third countries a treatment comparable to that enjoyed by third countries' entities in the Community by virtue of this Directive; whereas it is necessary to lay down a procedure to this end;

Whereas this Directive should apply to authorizations issued after the date by which Member States have to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive;

Whereas Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors[(5)] and Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors[(6)] apply to the entities in the energy sector as regards their procurement of supplies, of works and of services; whereas the application of the alternative arrangements provided for under Article 3 of Directive 90/53 I/EEC is subject in particular to the condition that, in the Member State requesting the application of these arrangements, authorizations be granted in a non-discriminatory and transparent manner; whereas a Member State fulfils this condition from the moment when and for as long as it complies with the requirements of this Directive; whereas it is consequently necessary to amend Directive 90/53I/EEC;

Whereas Article 36 of Directive 90/531/EEC provides for a review within four years, in the light of developments concerning in particular progress in market opening and the level of competition, of the field of application of that Directive. This review of the field of application includes hydrocarbon exploration and extraction;

Whereas Denmark is in a special situation, due to the fact that it is obliged to enter into negotiations on a possible continuation of the activities after the expiry of the concession, issued on 8 July 1962, concerning the areas which are relinquished on 8 July 2012 and that Denmark will thus be accorded a derogation concerning these areas,

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HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. *'competent authorities'* means the public authorities, as defined in Article 1 (1) of Directive 90/531/EEC, which are responsible for granting authorization and/or monitoring use thereof;

2. *'entity'* means any natural or legal person or any group of such persons which applies for, is likely to apply for or holds an authorization;

3. *'authorization'* 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 authorization may be granted for each activity separately or for several activities at a time;

4. *'public entity'* means a public undertaking as defined in Article 1 (2) of Directive 90/531/EEC.

Article 2

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.

However, Member States may refuse, on grounds of national security, to allow access to and exercise of these activities to any entity which is effectively controlled by third countries or third country nationals.

Article 3

1 Member States shall take the necessary measures to ensure that authorizations 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 authorization, 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 authorization.

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Where preference is given to applications by entities which are single natural or legal persons, the notice shall so specify.

3 Member States may grant authorizations without initiating a procedure under paragraph 2 where the area for which authorization is requested:

a is available on a permanent basis; or

b has been the subject of a previous procedure according to paragraph 2 which has not resulted in the grant of an authorization; or

c has been relinquished by an entity and does not fall automatically under (a).

A Member State wishing to apply this paragraph shall within three months of the adoption of this Directive or, in case of Member States who have not yet introduced such procedures, without delay arrange for the publication in the *Official Journal of the European Communities* of a notice indicating the areas within its territory which are available under this paragraph and where detailed information in this regard can be obtained. Any significant change in this information shall be the subject of an additional notice. However, no application for an authorization under this paragraph can be considered until after the publication of the relevant notice under this text.

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 authorization for an area to the holder of an authorization for a contiguous area. The Member State concerned shall ensure that the holders of authorizations for any other contiguous areas are able to submit applications in such a case and are given sufficient time to do so.

5 The following shall not be considererd as the grant of an authorization within the meaning of paragraph 1:

a the grant of an authorization solely by reason of a change of name or ownership of an entity holding an existing authorization, a change in the composition of such an entity or a transfer of an authorization;

b the grant of an authorization to an entity having another form of authorization where the possession of the latter authorization implies a right to the grant of the former authorization;

c the decision of the competent authorities taken within the framework of an authorization (whether or not such authorization was granted before the date fixed in Article 14) and relating to the commencement, interruption, prolongation or cessation of the activities or to the prolongation of the authorization itself.

6 Notwithstanding the initiation of the procedures mentioned in paragraph 2, Member States retain the option to refuse the granting of authorizations, whilst ensuring that this option does not give rise to discrimination between entities.

Article 4

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 authorizations 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 authorization does not exceed the period necessary to carry out the activities for which the authorization is granted. However, the competent authorities

may prolong the authorization where the stipulated duration is insufficient to complete the activity in question and where the activity has been performed in accordance with the authorization;

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

Article 5

Member States shall take the necessary measures to ensure that:

1. authorizations are granted on the basis of criteria concerning, in all cases:

   (a) the technical and financial capability of the entities; and

   (b) the way in which they propose to prospect, to explore and/or to bring into production the geographical area in question;

   and, where applicable:

   (c) if the authorization is put up for sale, the price which the entity is prepared to pay in order to obtain the authorizations;

   (d) if, following evaluation under the criteria (a), (b) and, where applicable, (c), two or more applications have equal merit, other relevant objective and non-discriminatory criteria, in order to make a final choice among these applications.

   The competent authorities may also take account, when appraising applications, of any lack of efficiency and responsibility displayed by the applicants in operations under previous authorizations.

   Where the competent authorities determine the composition of an entity to which they may grant an authorization, they shall make that determination on the basis of objective and non-discriminatory criteria.

   Where the competent authorities determine the operator of an entity to which they may grant an authorization, they shall make that determination on the basis of objective and non-discriminatory criteria.

   The criteria shall be drawn up and published in the *Official Journal of the European Communities* before the start of the period for submission of applications. Member States which have already published the criteria in their official journals may limit the publication in the *Official Journal of the European Communities* to a reference to the publication in their official journals. However, any change in criteria shall be published in full in the *Official Journal of the European Communities*;

2. the conditions and requirements concerning the exercise or termination of the activity which apply to each type of authorizations by virtue of the laws, regulations and administrative provisions in force at the time of submission of the applications, whether contained in the authorization or being one of the conditions to be accepted prior to the grant of such authorization, are established and made available to interested entities at all times. In the case provided for in Article 3 (2) (a), they may be made available only from the date starting from which applications for authorization may be submitted;